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BEFORE THE
CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD

IN THE MATTER OF:)
)
REGULAR MONTHLY BUSINESS)
MEETING)
)

TRANSCRIPT OF PROCEEDINGS

July 18, 2000

9:30 A.M.

CIWMB Boardroom
8800 Cal Center Drive
Sacramento, California

REPORTED BY:
Terri L. Emery,

1 SACRAMENTO, CALIFORNIA, JULY 18, 2000 - 9:30 A.M.

2 * * * * *

3 CHAIR MOULTON-PATTERSON: I'd like to call the
4 meeting to order. Welcome to the July 18th meeting of
5 the California Integrated Waste Management Board. Would
6 the secretary please call the roll.

7 BOARD SECRETARY: Eaton.

8 BOARD MEMBER EATON: Here.

9 BOARD SECRETARY: Jones.

10 BOARD MEMBER JONES: Here.

11 BOARD SECRETARY: Medina.

12 BOARD MEMBER MEDINA: Here.

13 BOARD SECRETARY: Paparian.

14 BOARD MEMBER PAPARIAN: Here.

15 BOARD SECRETARY: Roberti.

16 BOARD MEMBER ROBERTI: Here.

17 BOARD SECRETARY: Moulton-Patterson.

18 CHAIR MOULTON-PATTERSON: Here.

19 Welcome to the members of the audience. At this
20 time we request that you please turn off all cell phones
21 and pagers to avoid disrupting the meeting while you're
22 in the meeting room. We really appreciate that.

23 Do any Members have ex partes? We'll start with
24 Mr. Eaton.

25 BOARD MEMBER EATON: I have three. The first

1 one is from Bruce Kern from the Economic Development
2 Alliance of Business regarding agenda Item Number 15, and
3 then late last night there was a letter from Harry Stone
4 from the County of L.A. regarding AB 939. And then this
5 morning -- and I'm not sure where it came from or how it
6 came to be but I think we ought to ex parte it. It was
7 written to our Office of Public Affairs and distributed
8 at least to my office regarding Lionudakis Wood and Green
9 Waste Recycling, and the item that's on today is from a
10 Treva Kelly, T-r-e-v-a, last name K-e-l-l-y, regarding
11 the noticing requirements as it relates to Lionudakis.
12 So that was just distributed. I think we probably have
13 to do that if it came and came into our hands and it
14 relates to an item. I think it's ours. I don't know why
15 it was distributed, but --

16 CHAIR MOULTON-PATTERSON: Thank you, Mr. Eaton.
17 Mr. Jones.

18 BOARD MEMBER JONES: The letter from Harry Stone
19 from L.A. County, Stewart Cumming from Cimarron Ranch on
20 the Item 25, Bruce Kern on Item 15, Evan Edgar on Item
21 25, and that E-mail was sitting on my desk. I didn't
22 read it, but I'll ex parte it too. I didn't have a
23 chance to read it.

24 CHAIR MOULTON-PATTERSON: Mr. Medina.

25 BOARD MEMBER MEDINA: Fax from Bruce Kern

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1 regarding agenda Item Number 15, also a fax from Evan
2 Edgar regarding Item 25, and paid an on-site visit to
3 Lionudakis Wood and Green Waste Facility yesterday
4 evening.

5 CHAIR MOULTON-PATTERSON: Thank you, Mr. Medina.
6 Mr. Paparian.

7 BOARD MEMBER PAPARIAN: I just had a
8 meet-and-greet with John Cupps, John Hunter and Mark
9 Apreya. And I, too, have this E-mail regarding
10 Lionudakis. The other things a couple Members have
11 mentioned, the Economic Development Alliance for Business
12 letter and the item from Evan Edgar as well.

13 CHAIR MOULTON-PATTERSON: Thank you,
14 Mr. Paparian.

15 I have Patricia Franco, California Area
16 Resources for Education; also Kenneth Peterson of the
17 Kern County Board of Supervisors on Class II waste; Ron
18 Bates, Southern California Association of Governments on
19 Class II waste; and Evan Edgar on compostable organic
20 material regs. And I guess the E-mail on Lionudakis. I
21 haven't seen it.

22 BOARD MEMBER EATON: Treva Kelly.

23 CHAIR MOULTON-PATTERSON: Thank you. I'll ex
24 parte that also.

25 Okay. For those of you in the audience, there

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1 are speaker request forms on the back table. If you wish
2 to address any item on the agenda, please fill out a slip
3 with the specific item or items you plan on addressing,
4 as well as the item number, and give it to Ms. Villa who
5 will make sure we know of your desire to speak, and she's
6 right up here.

7 Do any Board Members have any reports that
8 they'd like to mention this morning?

9 Mr. Eaton.

10 BOARD MEMBER EATON: No. I'm fine. Thank you.

11 BOARD MEMBER JONES: No, Madam Chair.

12 CHAIR MOULTON-PATTERSON: Mr. Jones, thank you.

13 Mr. Medina.

14 BOARD MEMBER MEDINA: I have three reports,
15 Madam Chair.

16 June 29th I made an on-site visit to San
17 Francisco's solid waste program that included a visit to
18 two Norcal facilities.

19 On July 10th made a site visit to the Davis
20 Street Transfer Station in San Leandro and also a visit
21 to the Altamont Landfill with Chuck White and Ken
22 Stoddard.

23 July 13th, visit to Mexicali to meet with the
24 Education Secretary, Gomez Morine, who is Education
25 Secretary for Alta, Baja, California in regard to a joint

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1 program that we are doing with the Secretary. Also
2 visited some of the waste tire sites located in Mexicali.

3 And finally again, as reported previously, a
4 site visit to Lionudakis yesterday.

5 CHAIR MOULTON-PATTERSON: Thank you.
6 Mr. Paparian.

7 BOARD MEMBER PAPARIAN: Yes. On June 29th I
8 visited the Ostrum Road Landfill north of Wheatland.

9 On July 6th I visited the Lionudakis facility
10 here in Sacramento.

11 I also about a week and a half ago attended a
12 meeting with the Department of Conservation regarding
13 their large public relations contract that's upcoming.

14 CHAIR MOULTON-PATTERSON: Thank you,
15 Mr. Paparian.

16 Just briefly I visited the Azusa Reclamation
17 Landfill. Also Lakin Tires, Puente Hills Landfill and
18 other L.A. County facilities. I took a tour of that.
19 Also went by the Commerce Transformation Center and I
20 also delivered a speech to the SWANA southern California
21 group on Friday.

22 I would like to mention to the audience starting
23 in August, the Wednesday before the Board meeting we will
24 be having a publicly noticed agenda review for Board
25 Members and staff and the public is invited to attend.

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1 That will be the Wednesday before each board meeting in
2 this room.

3 I don't want to forget Mr. Chandler's Executive
4 Director report.

5 MR. CHANDLER: Thank you, Madam Chair.

6 Good morning, Members. I do have a couple items
7 I would like to touch upon this morning. So let me begin
8 with some preliminary statistics on the WRAP 2000
9 applications.

10 With really little or no mandate forcing the
11 commercial sector to participate in community waste
12 reduction efforts, the Board's Waste Reduction Awards
13 Program, we refer to as WRAP, is our way of saying "thank
14 you" to those businesses that are helping California
15 achieve its disposal reduction goals. In the process we
16 learn about best management practices, both environmental
17 and economic, for California's vibrant business
18 community.

19 Our application period for the 2000 awards
20 closed on June 30th. Staff plans on bringing the regular
21 WRAP winners forward for consideration at the Board and
22 will be considered for approval at its August 22nd
23 meeting with WRAP of the year designations anticipated to
24 follow in September.

25 I'm pleased to report that as a result of

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1 bringing the program's operations in-house and increasing
2 cooperation throughout the Board, as well as with our
3 local supporters, the number of applications received has
4 approximately tripled from last year. Staff is in the
5 process of reviewing those applications but we have some
6 preliminary numbers to report on to share the scope of
7 this year's increase.

8 Approximately 1700 applications were received
9 this year compared to 600 applications in 1999 of which
10 566 were designated as winners.

11 A bit on the fund condition, as you know I've
12 been meeting individually with each of your offices.
13 We're about halfway through that process, but I would
14 like to say a little bit in this public setting about the
15 Board's fund condition.

16 As you're aware, the legislature and the
17 Governor worked together this year to enact the 2000-2001
18 budget on time. The budget act included an augmentation
19 of \$7.3 million and 28 positions for the Board, and
20 highlights of these changes include approximately \$3
21 million and 24 positions associated with our budget
22 change proposals, approximately \$3 million and four
23 positions approved for the park bond initiative, and
24 approximately \$500,000 in general funds for some special
25 interest park improvement projects.

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1 In addition, nearly \$1 million of general fund
2 for board of control claim payable to Waste Management,
3 Inc. as a pass-through to remove 10,000 tons of
4 contaminated soil from the Altamont Landfill as a result
5 of the waste classification decision made by the
6 Department of Toxic Substance Control was also added to
7 our budget.

8 For those staff who may be listening to this
9 update at their desk-top computers, plan on providing an
10 overview of the fund condition summaries just as I've
11 been doing with each individual Board Member's office in
12 an all-staff meeting on July 27th in this board room.

13 Our LEA conference is coming up. The fourth
14 annual CIWMB LEA conference will be held on August 29th
15 through the 31st in San Diego. The conference will
16 provide a forum for our Local Enforcement Agencies and
17 board staff to collaborate on a variety of issues
18 including illegal dumping enforcement programs,
19 identifying closed, illegal, and abandoned sites and
20 their enforcement, as well as our diversion efforts.

21 A number of Board divisions and other regulatory
22 agencies will be conducting discussions, providing
23 up-to-date information to assist LEAs in their
24 inspection, enforcement and permitting programs.

25 The conference always provides creative

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1 opportunities for the LEAs and Board staff to work in
2 partnership on these issues they face. If you have not
3 attended one of these events before, I highly recommend
4 it. It is an excellent opportunity to develop an
5 understanding of the Board and the LEA relationship.

6 In the area of AB 75 plans, which you may be
7 aware, yesterday, July 15th, was the deadline for state
8 agencies, California state universities, community
9 colleges and large state facilities to submit their
10 Integrated Waste Management Plans to the Board as
11 required under AB 75.

12 As of yesterday morning, we received
13 approximately 200 plans and staff have received many
14 calls from agencies indicating that they will be sending
15 their plans and are simply waiting for the signature of
16 their appointing authority. Based on the volume of these
17 calls, we anticipate another 200 plans or so before the
18 month is out.

19 In all, we are expecting something in the
20 neighborhood of 500 plans by the time they are all in.
21 Staff is working to complete a database being developed
22 to manage those plans and expect to bring the first ones
23 forward for your consideration in September. Staff will
24 be following the procedures adopted by the Board at the
25 May meeting for reviewing and approving those plans.

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1 The next area I would like to touch on briefly
2 is the CIWMB and the Department of Conservation's report
3 to the legislature. Senate Bill 332 made substantial
4 changes to the management of the State's beverage
5 container recycling program. The law also contains a
6 requirement for the Board in consultation with the
7 Department of Conservation to prepare a report to the
8 legislature that identifies any duplication or overlap
9 between programs administered by our respective agencies.

10 These program areas specifically listed in the
11 law include: Number one, public information and
12 education; number two, local government review and
13 assistance programs; and three, recycled material market
14 development programs. The law also directs the Board to
15 include suggested legislation, budget actions or
16 administrative actions that could be taken to eliminate
17 any identified duplication or overlap between the two
18 agencies in programs. The report is due to the
19 legislature December 1st, 2000.

20 The approach we're taking in preparing this
21 report includes working directly with the Department to
22 identify not only existing areas of overlapping efforts
23 of responsibility, but also areas where we can further
24 collaborate to use our resources most effectively and to
25 maximize their impact. An excellent example of this is

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1 where our programs interface in the public education
2 area.

3 You may know that SB 332 earmarked \$10 million
4 to the Department to undertake a statewide public
5 information and education campaign. This is the meeting
6 that Mr. Paparian just referenced. They currently have
7 an RFP on the street for this campaign and we will be
8 assisting the Department in their evaluation of proposals
9 when they come in. We're also working with the
10 Department in other ways to open up communication. In
11 order to meet this December 1st deadline, I've directed
12 the Policy and Analysis office to take the lead in
13 gathering the necessary data and preparing the report.
14 Staff is currently gathering data from the line divisions
15 regarding existing overlap as well as areas where further
16 collaboration will occur.

17 Next month you'll be briefed of the results of
18 the data gathering effort as well as how we might further
19 work with the Department. The final draft of the report
20 will be prepared by the end of August or the beginning of
21 September and will be before you for consideration at
22 your October board meeting.

23 That should give us sufficient time to submit
24 the report to Cal/EPA and the Governor's office prior to
25 transmitting the report to the legislature by the

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1 December 1st deadline.

2 And that, Madam Chair, completes my report. If
3 there's any questions, I'd be pleased to answer them.

4 CHAIR MOULTON-PATTERSON: I see no questions.

5 Thank you for a very good report, Mr. Chandler.

6 Roman numeral five is continued business agenda
7 items. We have none and this takes us to the consent
8 calendar agenda, Items Number 4, 5, 6, 7, 9, 11 and 16
9 have been placed -- excuse me. Let me back up a moment.

10 I think I would like to first, before I do the
11 consent calendar, note those items that have been pulled.
12 Mr. Chandler, if this is incorrect, can you let me know
13 please?

14 Item 14, MBA Polymers loan has been pulled;
15 Item 17, scope of work, North Natomas Landscape Outreach
16 Program has been pulled; 18 has been pulled; 22, permit
17 for Lancaster Landfill and Recycling Center has been
18 pulled; 24, consideration of state legislation has been
19 pulled.

20 Is that correct, Mr. Chandler?

21 MR. CHANDLER: That's correct.

22 CHAIR MOULTON-PATTERSON: Thank you.

23 Now we will proceed to the consent agenda.

24 Items Number 4, 5, 6, 7, 9, 11, 16 have been placed on
25 the consent calendar, and would any Board Members wish to

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1 pull any of these items from consent?

2 Mr. Eaton.

3 BOARD MEMBER EATON: No, but we'll be hearing
4 Number 8 because that was on my consent thing.

5 CHAIR MOULTON-PATTERSON: Right. 8 will be
6 heard.

7 Mr. Jones, do you have any to pull?

8 BOARD MEMBER JONES: No. I'll just make a
9 motion that we adopt the consent calendar.

10 CHAIR MOULTON-PATTERSON: We have a motion by
11 Mr. Jones.

12 BOARD MEMBER MEDINA: Second.

13 CHAIR MOULTON-PATTERSON: Second by Mr. Medina
14 to adopt the consent calendar of Items 4, 5, 6, 7, 9, 11
15 and 16.

16 Secretary, would you call the roll, please.

17 BOARD SECRETARY: Eaton.

18 BOARD MEMBER EATON: Aye.

19 BOARD SECRETARY: Jones.

20 BOARD MEMBER JONES: Aye.

21 BOARD SECRETARY: Medina.

22 BOARD MEMBER MEDINA: Aye.

23 BOARD SECRETARY: Paparian.

24 BOARD MEMBER PAPARIAN: Aye.

25 BOARD SECRETARY: Roberti.

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1 Moulton-Patterson.

2 CHAIR MOULTON-PATTERSON: Aye.

3 We'll keep the roll open for Senator Roberti.

4 That takes us to our first new business item, Number 1,

5 Special Waste.

6 Mr. Leary's not here.

7 MS. WILLD-WAGNER: Good morning.

8 CHAIR MOULTON-PATTERSON: Good morning. Welcome.

9 MS. WILLD-WAGNER: I'm Shirley Willd-Wagner with
10 the Special Waste Division sitting in this morning for
11 Mark Leary, and we have the first three items on today's
12 meeting. The first two are with the Used Oil and
13 Household Hazardous Waste Branch and the third is the
14 Waste Tire Management Branch item.

15 First two items deal with the used oil recycling
16 block grant process. Over the past few months based on
17 input from Board Member offices and also the Division of
18 Administration and Finance, staff has developed some
19 suggestions to try to improve the award process for the
20 used oil recycling block grants. Today we're
21 recommending four specific changes to be implemented and
22 we're hoping these changes would both benefit the local
23 jurisdictions as well as streamline the process for award
24 from the Board.

25 In the second item we will then be presenting

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1 the actual six cycles of block grants for award to the
2 Board for the Board's consideration. Carol Mortensen,
3 Supervisor of the Used Oil and Household Hazardous Waste
4 Branch, will present Item Number 1 and 2.

5 CHAIR MOULTON-PATTERSON: Thank you.

6 MS. MORTENSEN: Thank you, Shirley.

7 Good morning, Madam Chair and Board Members. I
8 will present Item 1, consideration of approval for
9 proposed changes to the used oil recycling block grant
10 process for your consideration this morning.

11 The California Oil Recycling Enhancement Act
12 specifies that the Board award block grants to local
13 jurisdictions for the implementation of used oil
14 collection programs. The grants are non-competitive and
15 award amounts are calculated by a formula set in statute.

16 Local jurisdictions are eligible for block
17 grants as long as they meet the eligible criteria listed
18 in the statute. They must develop and submit a local
19 used oil collection program which includes collection
20 opportunities and public education, and they also must
21 submit an annual report of the description of all
22 measures taken to implement the local program and a
23 description of how the block grant was expended.

24 I will now discuss briefly the changes the Board
25 has made to the block grant process over the years that

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1 have resulted in increased efficiencies for both local
2 government and board staff.

3 Historically local governments have received
4 about 31 cents per capita through their block grant.
5 Very small jurisdictions do not receive sufficient
6 funding to implement even a modest used oil recycling
7 program. To overcome this barrier, in January of 1997
8 the Board approved the use of funds from the promotional

9 local assistance line item of the used oil recycling fund
10 to award minimum grant awards to small jurisdictions.
11 Cities receive at least \$5,000 and counties receive at
12 least \$10,000.

13 With the implementation of minimum block grant
14 awards, the number of block grant participants has
15 increased dramatically and used oil recycling programs
16 are now available at every county and in all but 14
17 cities in California.

18 The second improvement deals with recycling of
19 used oil filters. One of the major shortfalls in the
20 California Oil Recycling Enhancement Act is that it does
21 not address used oil filters. Undrained filters can hold
22 up to eight ounces of used oil, not to mention they are a
23 valuable source of metal that is available when the
24 filters are reclaimed.

25 A filter pilot collection study report to the

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1 legislature investigated these issues and resulted in a
2 budget change proposal that was approved which authorized
3 up to \$841,000 for the collection of used oil filters in
4 conjunction with local used oil program efforts.

5 Beginning in 1998, additional funds from the
6 promotional local assistance line item were made
7 available to each jurisdiction through block grants. The
8 filter collection monies were distributed on a per-capita
9 basis of about two and a half cents per person. However,
10 as with the block grants, minimum awards were also
11 established for filter funds, \$300 for small cities and
12 \$600 for small counties, with a maximum amount of
13 \$50,000.

14 The most recent improvement was made in June of
15 1999 when the Board began advancing block grant funds to
16 local governments. Previously grantees were paid in
17 arrears for expenditures related to their used oil
18 recycling programs. With the advance in funds, local
19 government staff no longer had to prepare detailed
20 payment requests and submit them to the Board for review
21 and processing. All expenditure documentation is
22 maintained at the local level.

23 Board staff continue to review semi-annual
24 reports and budget itemizations submitted by the local
25 governments. The documents are reviewed to determine

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1 project progress and appropriate expenditure of the
2 funds. The advance allows many jurisdictions, especially
3 those with cash flow problems, to implement their
4 programs more effectively.

5 These improvements to the block grant process
6 over the past six years have resulted in increased

7 efficiencies administratively and more effective
8 activities programatically that have resulted in a
9 dramatic increase in participation. Presently the Board
10 has 253 agreements with local jurisdictions through the
11 fifth cycle block grant. Many of those agreements
12 represent regional efforts.

13 This result is that over 99 percent of the
14 population and 524 of the 538 jurisdictions in California
15 are served by a block grant. This is a credit to the
16 improvements made so far by the Board and demonstrates
17 the Board's willingness to streamline an improvement
18 program to make it successfully internally and easy for
19 jurisdictions to become involved in and implement on a
20 local level.

21 So to provide further efficiencies to the block
22 grant process, staff propose the following four changes:
23 Award block grants annually for a three-year term; award
24 block grants to all eligible jurisdictions; block grants
25 on consent agenda; and extensions for block grants due to

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1 natural disasters or capital outlay projects.

2 On proposal number one, currently block grants
3 are awarded annually for a three-year term. Staff
4 proposes that each year in July, block grant allocations
5 would be awarded to eligible jurisdictions that meet the
6 criteria set forth in statute and are currently
7 implementing programs. Grant funds would be available
8 for a full three-year period beginning on July 4th or
9 before or upon the passage of the budget; so awards in
10 July with three years for them to spend the money.

11 The current process is the grant term is for
12 three years. For example, the latest one was June 30th,
13 1997 through June 30th, 2000. At the beginning of the
14 cycle, grantees received their first year allocation.
15 For the next two years the agreement is augmented with
16 the annual allocation.

17 The grant term ends at the end of the third
18 year. Jurisdictions must sign and return the agreement
19 for each augmentation within 90 days. This results in
20 jurisdictions having less than a year to expend their
21 last allocation of grant money.

22 So the benefit realized from the proposal would
23 be that grantees would have a full three years to expend
24 the annual allotment of funds allowing them greater
25 flexibility in expending their grant money. Each annual

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1 grant would have its own allocation and a specific term.
2 However, large expenditures such as capital outlay or
3 facility construction or large education projects could
4 be funded out of more than one grant.

5 Proposal number two is to award grants to all
6 eligible jurisdictions. Staff proposes that all
7 jurisdictions in California would be recommended for
8 award in their annual block grant allocation. However,
9 staff would not be authorized to enter into an agreement
10 with any jurisdiction until they met the criteria set
11 forth in statute and demonstrated that they are current
12 with the required block grant reports.

13 Currently block grant awards are only made to
14 those jurisdictions that have submitted a complete
15 application and met the criteria set in statute.
16 Jurisdictions that do not apply for the cycle or miss the
17 application deadlines are not recommended and may not
18 apply until next year.

19 The benefit from this proposal would be that
20 staff -- over the past few years staff has worked
21 diligently to increase participation in the block grant
22 program and the result of these efforts, like I said
23 before, is that 524 of the 538 jurisdictions in
24 California have a block grant and a used oil recycling
25 program.

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1 Staff would like jurisdictions to be able to
2 participate in the program even if they do not submit an
3 application during the noticed application period. Staff
4 recommends the Board award funds each year to all
5 jurisdictions in the state and authorize staff to enter
6 into agreements with any jurisdiction submitting a
7 complete application. What this would allow us to do is
8 enter into agreements with jurisdictions such as the
9 newly formed City of Elk Grove who because they weren't
10 incorporated officially until July 1st of this year, our
11 application period ended in April. If we -- if this
12 Board adopts this proposal, we would be able to enter
13 into an agreement with them during the rest of the year.

14 You can see by the slide we only have 14 little
15 cities left and we would sure like to have the
16 opportunity to drag them in here and help them
17 participate or get them as a member of a regional
18 program. We would like that opportunity.

19 Number three, proposal three is to place block
20 grant awards on the consent agenda. Block grants are
21 non-controversial. They do not stimulate outside
22 constituents because they are non-competitive, and the
23 awards are routine in nature as they have been awarded
24 for the past six years. Currently, as I'm here today,
25 block grants are presented in an item to the Board on an

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1 annual basis.

2 The benefit realized would be that the nature of
3 these grant awards fit the criteria for being placed on
4 the consent calendar and a press release will still be
5 issued to inform the public of the Board's action.

6 And the final proposal is allowing program
7 management to -- grant extensions to block grants for
8 natural disasters and capital outlay projects.
9 Jurisdictions are fully expected to expend their annual
10 block grant allotment by the end of the three-year term.

11 However, in very rare instances circumstances
12 may arise that delay the implementation of a
13 jurisdiction's program or delay in the construction of a
14 facility or other capital improvement. In these
15 instances, extensions would be granted by program
16 management. Specific incidents that would warrant
17 extensions that could be granted by program management
18 would be natural disasters including flood, fire,
19 earthquake or other acts of God, or delays in capital
20 outlay projects such as construction or improvement to
21 facilities.

22 Program management can only grant extensions for
23 capital improvement when the intent for the specific
24 capital improvements have been indicated in the grantee's
25 spending projection.

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1 Jurisdictions that wish to request an extension
2 for these specific reasons could do so in writing to
3 program management. They would explain the reason for
4 the request and provide a time line that would ensure the
5 funds would be expended within a reasonable amount of
6 time. The term for these such extensions would not
7 exceed two years. Extensions for reasons other than
8 those listed above would be -- would have to be brought
9 to the Board or if the extension was for longer than two
10 years. Currently all requests to extend grant agreements
11 beyond the three-year term must be approved by the Board.

12 The benefit realized from this proposal would be
13 that the Board would not have to hear extension requests
14 for delays due out of control of the local government.
15 These types of extension do not usually reflect on the
16 jurisdiction's ability to plan or implement the program.
17 Issues of performance and other issues would be heard by
18 the Board.

19 So in conclusion, the modifications to the block
20 grant process will facilitate even greater efficiencies
21 for both local government staff as well as board staff,
22 and also administratively in support of the Board's
23 in-house waste reduction and recycled content procurement
24 policy, staff will make an additional administrative
25 change to the block grant process that will reduce the

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1 amount of paper used during the application periods by
2 over 50 percent. We are going to implement a simplified
3 application process and rather than having grantees
4 submit a whole new application every year, a summary of
5 previously submitted information will be faxed or
6 E-mailed to each grantee annually. The grantee would
7 then update the form, indicating any changes, either new
8 program managers or locations, phone numbers. This would
9 allow staff to update changes and contact information or
10 application status.

11 If necessary, jurisdictions would still submit
12 resolutions from their governing bodies authorizing them
13 to receive funds. Jurisdictions could submit
14 long-standing or long-term resolutions if they wish that
15 would allow them to apply for block grant funds as long
16 as they are available. Full applications will be mailed
17 annually to those jurisdictions that currently do not
18 participate, so those 14.

19 That concludes my presentation. I would be
20 happy to answer any questions at this point.

21 CHAIR MOULTON-PATTERSON: Thank you very much,
22 Ms. Mortensen.

23 Before we go on with our discussion, I would
24 like to have the record note that Senator Roberti is
25 present. Would you like to disclose any ex partes at

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1 this time?

2 BOARD MEMBER ROBERTI: I think I'm up to date.

3 CHAIR MOULTON-PATTERSON: Also, we left the roll

4 open on the consent calendar of Item 4, 5, 6, 7, 9, 11

5 and 16.

6 Would you like to vote? Okay.

7 BOARD MEMBER ROBERTI: Yes.

8 BOARD SECRETARY: Senator Roberti.

9 BOARD MEMBER ROBERTI: Yes.

10 CHAIR MOULTON-PATTERSON: Thank you, Senator

11 Roberti.

12 Any report or anything while we're taking this

13 little break?

14 BOARD MEMBER ROBERTI: No reports.

15 CHAIR MOULTON-PATTERSON: Thank you very much.

16 Ms. Mortensen is available for questions.

17 Mr. Eaton.

18 BOARD MEMBER EATON: It's more of a comment.

19 I'm not sure that the questions can be answered, but let

20 me try and take place because there is some corrections

21 with regard to the history explained by staff.

22 This process began nearly almost three years ago

23 in terms of trying to get the used oil fund corrected.

24 At that time no money was going out on the street. We

25 had the industry, the oil industry, attacking us both

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1 legislatively and in the budget for not spending these
2 monies. The reserves were high up. Part of that had to
3 do with the fact that we required as an organization a
4 ton of paperwork.

5 But to make a long story short, we were able to
6 successfully circumvent that and get the money out and
7 reverse the process by which now the money gets to the
8 locals. Before it wasn't even getting to the locals
9 because if you had a \$5,000 claim, you had to build up
10 all these receipts and send it in. Those of you that
11 have been in local government know that's not something
12 you're going to do for \$5,000, let alone all of the
13 paperwork. It probably cost you more to prepare it. So
14 that was changed.

15 With this proposal that's before us right now,
16 we simply have shifted the pea under the shell to a
17 different instance. We are now saying that -- and the
18 other reason that the legislature and the executive
19 branch both attacked us was because the money wasn't not
20 only getting out our door but wasn't getting spent. Now
21 in a situation where we have now said okay, our reserves
22 are low because we've gotten the money out the door,
23 there's no real teeth in this to allow or to make sure
24 that the jurisdictions spend the money. Rather, we have
25 given them opportunities not only to have three years in

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1 which to spend the money, which is I think reasonable,
2 but extensions thereafter. So we would be out five,
3 seven, even nine years under the proposal that's before
4 us before this money is even getting spent. With
5 inflation and other kinds of things and other instances,
6 whether it be that the local government funds aren't
7 sufficient, reserves rather than building up in our
8 coffers will be building up in the local government
9 coffers and being unable to be spent for whatever
10 reasons.

11 I don't think this proposal as such for
12 efficiencies really results in efficiencies. It will
13 result in the fact that monies aren't going to be spent
14 where they should be spent on a very, very critical
15 problem.

16 Two, I don't know of any other program at the
17 Board where first we've delegated the authority for
18 extensions. Normally delegation of authority goes to the
19 Executive Director with most of our programs. Now we're
20 delegating authority directly to program staff without
21 any review. I don't have a problem with stuff going on
22 consent, but I think it ought to have a review by the
23 proposal, by the process by which we set up the consent
24 calendar.

25 I think the precedent of having program staff or

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1 anyone have that kind of authority I think flies in the
2 face of what our oaths happen to be. I don't believe
3 that that is in our best interest as a Board. And with
4 regard to the consent calendar, these items -- what
5 happened -- what is the appeals process if someone
6 doesn't feel that our staff has applied the criteria? If
7 this proposal goes forward, we as the Board have no
8 action by which the appeal because the decision's already
9 been made.

10 I think that's part of what we're looking for
11 here is this can be handled just like any other consent
12 item. It can go before the consent agenda individual or
13 persons who look at it just for a quick review and then
14 be put on and I don't think it interrupts anything.

15 Furthermore, the resolution is somewhat
16 confusing because it says the extension would not exceed
17 two years, and the next sentence says it could be for
18 longer than two years and must be brought for
19 consideration. So are we looking at -- if a jurisdiction
20 didn't spend the money in year one, year two or year
21 three, and under their criteria applied for an extension,
22 staff gave them an extension so that would be five
23 years, and then for whatever reason a natural disaster
24 could intervene in the fifth year and we would have to
25 give them seven years.

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1 Well, that \$5,000 or \$100,000 or whatever the
2 grant may be based on per capita doesn't really have as
3 much spending power. So the original criticism that we
4 had is that the money must get out of the State's hands
5 and into the locals' hands, and not only must it get into
6 the locals' hands but it must be spent on projects.

7 This policy I don't think promotes that. It may
8 promote efficiency, but it doesn't promote results.
9 Therefore, I'm not going to be able to vote for this
10 particular proposal as it stands. I think the delegation
11 of authority is improper and not wise because we'll be
12 seeing it -- you watch. Mark my words. Every one of our
13 divisions -- this is no reflection upon our staff -- will
14 try and do the same thing on all the other programatic
15 items.

16 CHAIR MOULTON-PATTERSON: Thank you, Mr. Eaton.
17 Mr. Medina.

18 BOARD MEMBER MEDINA: First I want to
19 congratulate staff for their work in increasing the
20 number of cities and counties that are using the block
21 grant program.

22 I also, however, was concerned in regard to the
23 lack of an application process. There's such a thing as
24 too-easy money, and even though I come from local
25 government and I know that local government does its best

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1 to use the money, that it's still from my perspective
2 necessary to have an application process.
3 Jurisdictions -- and you've done a good job of notifying
4 jurisdictions of the availability of funds and all they
5 have to do is apply for their share. There has to be
6 some accountability with the local jurisdictions.

7 And if there's a problem with the application,
8 if it's too detailed, causing some jurisdictions not to
9 apply, then perhaps we need to review the application
10 process.

11 So I also would not be able to support what's
12 being presented, but at the same time I did not want the
13 staff's work to go unrecognized because they have made a
14 significant improvement in the program and I'm willing to
15 work with regard to making it work.

16 CHAIR MOULTON-PATTERSON: Thank you, Mr. Medina.
17 Mr. Paparian.

18 BOARD MEMBER PAPARIAN: I wanted to follow up on
19 something Mr. Eaton suggested and that was a question
20 about the kind of checks and balances here in terms of
21 are they spending the money, are we monitoring how
22 they're spending the money. Can staff explain? What do
23 we do to check on how this money is being spent or
24 whether it's being spent? Do we have any handle on how
25 much money is just sitting out there at any point in

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1 time?

2 MS. MORTENSEN: Sure we do. Actually, I can
3 probably answer both Mr. Medina's question and your
4 question, Mr. Paparian.

5 The application process for the used oil block
6 grants is fairly simplified because it's non-competitive
7 and it's a per-capita award. What we ask them to tell us
8 is what they plan on using the money for. They give us a
9 budget of what kind of activities they're going to
10 undertake and for the grant period, and that includes
11 such things as public education which is required by the
12 statute, as well as collection opportunities which are
13 also required by the statute. They do tell us that.
14 Since they aren't competing against each other for the
15 money, we just want the basics from their ensuring that
16 they are going to have collection opportunities and
17 education.

18 When those come into us, we review them to make
19 sure they are complete, make sure their resolutions are
20 proper. Both the grants administration unit and used oil
21 program staff look at those together.

22 The other thing we do check is to make sure if
23 they've had a block grant in the past that they are up to
24 date on all their reports and their spending projection
25 forms which they give to use as well as their budget

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1 itemizations to let us know what they plan on spending
2 the money on and if they've indeed done so. That's our
3 check and balance.

4 Under these scenarios, we would not enter into
5 an agreement with anybody who was not up to date on their
6 report. If they're not up to date on their reports, we
7 don't know what they're doing and we don't want to give
8 them any more money until we're confident that they do
9 have a program implemented.

10 Most folks do spend their money within their
11 first year allotment. The majority of them do. Some
12 spend it early. Some spend a few months over. What we
13 found is some smaller jurisdictions, with the Board
14 allowing advance of these funds last year, have started
15 to set a little bit of their money aside for larger
16 regional efforts, especially L.A. County has been doing a
17 lot of that. Also, Sacramento County, now that we've
18 done the advance, they've been saving a little bit of
19 their money every year to construct a permanent household
20 hazardous waste facility out on the Roseville Road
21 Transfer Station site. So that will be another
22 collection opportunity for used oil that wasn't there
23 before.

24 We do have a fairly good checks and balances on
25 them as far as their money, if they're spending their

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1 money on what they're supposed to and we're at a pretty
2 high confidence level about what they're doing and that
3 they're spending their money. We do have our folks that
4 need their hand-holding, but the nice thing also about
5 with this advance is we don't have to process those big
6 fat payment requests anymore and that's allowed us a lot
7 more time and even more time in the future to go out and
8 target these guys that maybe aren't spending their money
9 and help them put a plan in place.

10 MS. WILLD-WAGNER: I just would like to say that
11 also as far as checks and balances, that each grantee
12 does submit both the spending projection, what they plan
13 to spend the money on, and in a semi-annual report they
14 report to us twice a year on what they have spent their
15 money on, a detailed listing of how they spent their
16 money. And then, of course, three years after the grant
17 they are audited. Not every single one, but we do have
18 an audit function here at the Board that we also audit
19 the grantee.

20 BOARD MEMBER PAPARIAN: Do we have a process for
21 getting the money back if we're not satisfied --

22 MS. WILLD-WAGNER: Yes.

23 BOARD MEMBER PAPARIAN: -- with how they're
24 spending?

25 MS. WILLD-WAGNER: Yes.

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1 MS. MORTENSEN: Both through the audit process
2 is the way that it's traditionally been done. Also,
3 under the new proposal what we worked out with
4 Administration and Finance is that before they get the
5 next allocation under the next three-year allocation, if
6 the older money is not expended they have to then return
7 it at that time. If that hasn't been spent during the
8 three-year period, if the money is not spent during the
9 three-year period, then they would return what has not
10 been spent.

11 BOARD MEMBER EATON: You wouldn't know that
12 until perhaps year five or six, would you, because under
13 the scheme you allocate each year. If you allocate in
14 year two that -- the first year has three years by which
15 to spend that money. So you're not going to be able to
16 not enter into an agreement. You're going to have
17 multiple agreements entered into until such time as you
18 find out in year five if they didn't spend the money
19 after that time.

20 MS. WILLD-WAGNER: I don't believe it would be
21 year five.

22 BOARD MEMBER EATON: How would you know in year
23 two if Jurisdiction A didn't spend their money?

24 MS. WILLD-WAGNER: We wouldn't know -- let me --

25 BOARD MEMBER EATON: But you would enter into an

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1 agreement because year two has a separate allocation.

2 MS. WILLD-WAGNER: Yes.

3 BOARD MEMBER EATON: Exactly.

4 MS. WILLD-WAGNER: If you look on the third
5 slide here, this might help a little bit. For the year
6 two allocation would be -- or the agreement for year two
7 would be entered into. If we can use the example 01-02,
8 there would be an agreement entered into then, even if
9 00-01 money is not expended because we would not know
10 about that year, correct, but we would not -- at the end
11 of three years, the 00-01 money here in the green goes
12 through '03, June 30th of '03, and then by that August we
13 would know whether or not that money is allocated.
14 Rather than five years, it's only three years into the
15 August and then the 04-05 money would not be --

16 BOARD MEMBER EATON: And they would be eligible
17 for which monies then? Year 03-04?

18 MS. MORTENSEN: 02-03 because we would have a
19 report by then. We actually know before that because
20 they report to us semi-annually, every six months. So we
21 would have an idea if they weren't doing what they were
22 supposed to or if they were off track. We wouldn't give
23 them any more money until we got them back on.

24 BOARD MEMBER EATON: But that goes directly to
25 the consent calendar, the allocation.

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1 MS. WILLD-WAGNER: Yeah.

2 CHAIR MOULTON-PATTERSON: Senator Roberti.

3 BOARD MEMBER EATON: Yeah. I guess there's a
4 couple of problems there.

5 CHAIR MOULTON-PATTERSON: Thank you, Mr. Eaton.
6 Senator Roberti is next.

7 BOARD MEMBER ROBERTI: First on the point of the
8 consent calendar and the extensions, when I came here
9 this morning I was sort of prepared to go along, but I
10 think Mr. Eaton has convinced me if there is a legal
11 problem or a possibility that processes weren't properly
12 followed, that's what we're about, to be the court of
13 last resort.

14 However, I think staff has somewhat convinced me
15 that their application process is correct. In earlier
16 briefings I was sort of tinning the other way. The
17 reason is I think it's more dangerous for us to have a
18 balance on our books than for local governments to have
19 the balances on their books, and for any number of
20 reasons, but having being an experienced old pro in the
21 legislature, the fact that any agency manages well who is
22 going to have a balance on their books is very dangerous
23 because every other agency is going to raid it.

24 The staff has come up with a system which is a
25 more continuing process in which the monies appear to be

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1 encumbered because they are encumbered on some matters
2 which are somewhat perfunctory. So I think it's proper,
3 rather than having this artificial deadline at the end of
4 the third year, where does the money go? It goes back to
5 us? A legislative review of that money is going to say
6 hey, the Waste Board has not spent all of its funds.

7 So from our viewpoint, the danger of our not
8 spending the money is I think far greater than the fact
9 that some local jurisdictions may not have spent the
10 money. I know there's two very legitimate ways of
11 looking at this. We won't know who's right unless we
12 work the whole system out, but that may be too late.

13 So my own preference would be that we don't show
14 the balances because we are in the process of encumbering
15 the money, we are doing our job but we have this
16 artificial deadline.

17 So on that point, I would hope that the staff
18 maybe could come back with a revised proposal or
19 something of that nature. I guess the whole thing needs
20 a little bit more work. I think staff put an awful lot
21 of work in this, and I agree with Mr. Medina. They
22 should be commended for their work and especially
23 commended for finally explaining this because it is
24 terribly Archean.

25 CHAIR MOULTON-PATTERSON: Thank you, Senator

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1 Roberti. I have a question, Mr. Eaton. I haven't been
2 through this process and so I want to understand.

3 BOARD MEMBER EATON: Consider yourself lucky.

4 CHAIR MOULTON-PATTERSON: Is the problem in your
5 mind that in the department they would be making the
6 consent calendar decision rather than going through
7 Mr. Chandler? Did I understand that right?

8 BOARD MEMBER EATON: That's one of the issues
9 and you just saw the issue pointed out right now that if
10 there is a problem in year three or in the out year,
11 there's no discretion. That allocation has to go to the
12 consent calendar by which we do, and all that would
13 happen would be that you would have the opportunity to
14 correct that. I'm just saying that -- I think I share
15 the Senator's support of the fact of the three-year term
16 because that was one of the things that I pushed for was
17 to extend that out.

18 I'm thinking some of the finer details of the
19 things that can go wrong haven't been quite fleshed out.
20 I think coming back with a more refined proposal
21 incorporating what we've agreed to, basically i.e. the
22 three-year point, looking at the consent item, the
23 delegation item as well.

24 That doesn't mean that in Item 2 today we can't
25 allocate the money if they bring something back. I'm not

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1 proposing that we don't -- we just shut it down because
2 we can't agree on the process. I think that would be a
3 terrible mistake on our part as a Board. What I'm trying
4 to say is that let's get the idea of the delegation
5 flushed out, let's get the issue, quite frankly, of is
6 there an appeals process, is there at least with regard
7 to how do we get the locals to have some accountability.

8 I think that the program staff and the
9 administrative staff who governs this have other examples
10 of this and this was a good first cut and it's a hard cut
11 because you have all kinds of circumstances that can
12 arise. For instance, if local jurisdictions were
13 suddenly cash poor, I guess for many local jurisdictions
14 they say they are cash poor, but let's just say that's
15 something that would happen. That is a legitimate reason
16 probably why they couldn't spend their money.

17 On the other hand, some of them do nest it away
18 quite good, and if we can get it to another jurisdiction
19 that needs the money on a much more regional basis, we
20 ought to be able to do that as well, and that is the
21 flexibility that's not built in. It's much too rigid.

22 CHAIR MOULTON-PATTERSON: Thank you, Mr. Eaton.
23 Mr. Jones.

24 BOARD MEMBER JONES: Madam Chair, I would agree
25 with that. I think that putting the block grants on the

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1 consent, I'm not comfortable with that. I'm not
2 comfortable with the extensions just being automatic. I
3 think that this has got to be a use it or lose it.

4 By changing to a three-year per grant
5 application, you are giving local governments an
6 incredible tool to be able to plan. To give them the
7 opportunity to go out and get extensions is no longer a
8 tool, it just -- it's just an excuse for not getting the
9 job done. So I would have a hard time supporting that.

10 I like seeing the items in front of our Board
11 for this kind of a debate, and I think the next item is
12 pretty much a no-brainer. So we don't mind doing the
13 work or you know. So maybe we could come back next
14 month.

15 CHAIR MOULTON-PATTERSON: Thank you.

16 MS. WILLD-WAGNER: Madam Chair, we did devise
17 the resolution and the item so we could perhaps separate
18 these out. And if it's all right with the Board, you
19 could consider just approving recommendations one and two
20 and they're listed specifically in the therefores in the
21 resolution. That's why we designed it that way, to be
22 able to pull out anything where the Board was not
23 comfortable.

24 BOARD MEMBER EATON: I would rather see it come
25 back as a whole item rather than a piecemeal.

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1 BOARD MEMBER JONES: Do you need that -- Madam
2 Chair, a question.

3 CHAIR MOULTON-PATTERSON: Mr. Jones.

4 BOARD MEMBER JONES: Do you need that because of
5 this next grant award? Because it would still be a
6 three-year award; right?

7 MS. MORTENSEN: Yes. It would just revert to
8 the three-year period with the drop-dead date at the end
9 of the three years instead of the overlapping.

10 BOARD MEMBER JONES: This Item 2?

11 MS. MORTENSEN: Item 2.

12 BOARD MEMBER JONES: Is going to be granted
13 today. When is the term up on that, in 2003 and 4?

14 MS. MORTENSEN: We have it -- the application
15 was originally written as a three-year grant term with
16 the drop dead date of 2003.

17 MS. WILLD-WAGNER: 2003.

18 MS. MORTENSEN: The way the application was
19 written and the way the resolutions the local governments
20 submitted were prepared is if the Board did agree to go
21 to the one-year overlapping agreements in this first
22 item, we could use those applications in that manner.

23 BOARD MEMBER JONES: But we're not -- it kind of
24 sounds like we're not prepared to go there right now.

25 MS. MORTENSEN: We can divert to the --

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1 BOARD MEMBER JONES: Would you be able to give
2 this award, the next item, out as a three-year grant
3 without us -- you know, the process of us dealing with
4 Item 1 next month as a continued item, would Item 2 still
5 be able to go out at a three-year grant?

6 MS. WILLD-WAGNER: I believe it would.

7 MS. MORTENSEN: We could do that.

8 CHAIR MOULTON-PATTERSON: I think I hear the
9 Board --

10 BOARD MEMBER EATON: It just needs to get
11 cleaned up.

12 CHAIR MOULTON-PATTERSON: -- saying that they
13 are uncomfortable with Number 1 because the delegation
14 appeals process and the local accountability questions
15 and the extensions not automatic.

16 Do you have enough information on Number 1 to go
17 back and bring it back? I think that's what the Board
18 wants.

19 MS. WILLD-WAGNER: I believe so, yes.

20 MS. MORTENSEN: Yes.

21 CHAIR MOULTON-PATTERSON: Okay. Then we will go
22 directly -- thank you very much for all your work. We
23 really do appreciate it.

24 BOARD MEMBER JONES: So we'll continue that,
25 Madam Chair?

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1 CHAIR MOULTON-PATTERSON: We'll continue Number
2 1 until our August meeting and we'll move to Number 2.

3 MS. WILLD-WAGNER: Carol will also present Item
4 Number 2.

5 MS. MORTENSEN: Item Number 2 is consideration
6 of approval of fiscal year 2000-2001 sixth cycle used oil
7 block grant awards.

8 In accordance with the Waste Board's grant award
9 process, the Board provides funds to cities and counties
10 for the used oil block grant based on the allocation
11 process established in statute. Staff recommends
12 awarding \$12,297,961 for the fiscal year 2000-2001 sixth
13 cycle block grant awards to eligible jurisdictions.

14 As I discussed, block grants are mainly used by
15 jurisdictions to provide used oil filter recycling
16 programs for their residents including education and
17 collection opportunities and general -- and the education
18 that they do is also general education which is
19 broad-sweeping education like billboards and bus
20 shelters, direct mailers. They also do a lot of targeted
21 education like outreach at race tracks and minor league
22 baseball and soccer, car shows, swap meets, things of
23 those nature.

24 Local governments, also through the block grant
25 program, have the option of developing regional programs

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1 consisting of several cities and/or counties to enhance
2 efficiencies. Locals are also encouraged to develop
3 partnerships with private, non-profit or other
4 governmental organizations to leverage funds and
5 resources.

6 Statute specifies that the greater of \$10
7 million or half of the funds remaining in the used oil
8 recycling fund be allocated for block grants and
9 stipulates that the awards be calculated on a per-capita
10 basis for each jurisdiction. In addition, jurisdictions
11 will receive funds from the promotional and local
12 assistance line items for used oil filter recycling
13 activities which results in an award equaling about .3476
14 cents per capita.

15 The notice of funding availability announcing
16 the sixth cycle used oil block grant was posted on the
17 Board's web site in January. Applications and
18 instructions were mailed to all the eligible local
19 jurisdictions. Many -- staff has received 242
20 applications and many of those applications cover
21 regional programs. And like I said, about 99 percent of
22 the state's population is represented.

23 Applications were reviewed by staff from the
24 Grants Administration Unit and the used oil recycling
25 program to ensure that the application form was complete,

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1 that the resolution was submitted correctly, the spending
2 projection form was completed, and all the reports from
3 the previous block grant cycles were accounted for and
4 approved.

5 So staff applied the funding allocation formula
6 established by statute and recommends the applicants
7 listed in Resolution Number 2000-103, attachment one, the
8 award in the amount of \$12,297,961. Any questions?

9 CHAIR MOULTON-PATTERSON: Thank you,
10 Ms. Mortensen.

11 BOARD MEMBER JONES: Madam Chair.

12 CHAIR MOULTON-PATTERSON: Mr. Jones.

13 BOARD MEMBER JONES: I would like to move
14 adoption of Resolution 2000-103 in the amount of
15 \$12,297,961 in block grants.

16 BOARD MEMBER MEDINA: I would like to second
17 that.

18 CHAIR MOULTON-PATTERSON: Thank you very much.

19 Motion by Mr. Jones, seconded by Mr. Medina for
20 Resolution 2000-103 for the approval of fiscal year
21 2000-2001 sixth cycle of used oil block grant awards of
22 \$12,297,961.

23 Would you please call the roll.

24 BOARD SECRETARY: Eaton.

25 BOARD MEMBER EATON: Aye.

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1 BOARD SECRETARY: Jones.
2 BOARD MEMBER JONES: Aye.
3 BOARD SECRETARY: Medina.
4 BOARD MEMBER MEDINA: Aye.
5 BOARD SECRETARY: Paparian.
6 BOARD MEMBER PAPARIAN: Aye.
7 BOARD SECRETARY: Roberti.
8 BOARD MEMBER ROBERTI: Aye.
9 BOARD SECRETARY: Moulton-Patterson.
10 CHAIR MOULTON-PATTERSON: Aye.
11 Thank you. Motion approved.
12 Item 3.
13 MS. WILLD-WAGNER: Item 3 will be addressed by
14 Martha Gildart, Manager of the Waste Tire Management
15 Branch.
16 CHAIR MOULTON-PATTERSON: Thank you both.
17 Good morning, Ms. Gildart.
18 MS. GILDART: Thank you, Madam Chair. Good
19 morning, Members.
20 This item is an award to a contractor. We
21 have -- the Board had approved in the last fiscal
22 year's act -- it wasn't -- last fiscal year the Board
23 approved the use for this fiscal year of dollars from the
24 waste tire management fund and \$350,000 was set aside for
25 this purpose.

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1 Chuck Snyder of our branch is going to present
2 the process we went through in selecting the contractor
3 for the environmental tire pile fire assessment contract.

4 CHAIR MOULTON-PATTERSON: Thank you.

5 MR. SNYDER: Good morning, Madam Chair, Board.
6 My name is Chuck Snyder. I'm in the Special Waste
7 Division under the tire grant program.

8 In November, as Martha stated, the Board
9 allocated \$350,000 to perform the tire pile fire
10 environmental assessment, and at the February board
11 meeting an agenda item was presented with the scope of
12 work and a bid process in order to implement this
13 program.

14 The main purpose of the contract was to conduct
15 a workshop of experts with professional knowledge of tire
16 pile fires and related environmental and health and
17 safety consequences and the contractor, with the help and
18 advice of the workshop participants, is to develop a
19 report of the workshop results and to submit to the
20 Board.

21 The report will include, but not be limited to,
22 the following: Recommended fire fighting techniques for
23 urban and rural tire pile fires; the report will address
24 human health and safety concerns which include
25 information on contaminants released into the air, soil,

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1 surface water and groundwater as the result of a typical
2 tire pile fire; the report shall provide guidance and
3 recommendations from workshop participants on when and
4 where to set up environmental monitoring stations to
5 adequately characterize all the contaminants released
6 during a tire pile fire; and recommended sampling and
7 analysis procedures to adequately characterize the impact
8 on the air, soil, surface water and groundwater.

9 The item went out to bid and we received four
10 bids on the item. There were three main tasks that were
11 being bid on. The first task was the cost of convening
12 the two-day workshop to include the eight experts to be
13 held in a board meeting room, and the second task
14 required the bidders to perform sampling and analysis of
15 the soil, air, water and/or groundwater at current fire
16 sites or previous fire sites to determine the
17 constituents of concern.

18 If a bidder believed that they had sufficient
19 evidence or sufficient data to address this impact, this
20 concern, this task, then it was optional on their part
21 whether or not to assign a cost to that task. The third
22 task required the bidders to prepare a written report
23 which summarizes the findings and recommendations of the
24 panel of experts. And in addition, the bidders were to
25 provide the Board with an electronic copy of the report

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1 and 50 hard copies.

2 The low bidder on the project which also met all
3 the criteria in the -- on the tasks that were put out to
4 bid was Environmental Engineering and Contracting,
5 Incorporated, and we recommend that the Board approve the
6 contractor to go ahead with this study.

7 CHAIR MOULTON-PATTERSON: Thank you very much.
8 Any questions?

9 BOARD MEMBER EATON: Just a couple.

10 CHAIR MOULTON-PATTERSON: Mr. Eaton.

11 BOARD MEMBER EATON: Who are they? Since we've
12 never seen this group before, who are their principals?
13 What was their past work? What were the other bids'

14 range? Obviously with low bid contracts, you always want
15 to kind of find out are you getting just a good deal or
16 are you getting a deal that appears good? Do you know
17 what other work they've done in the tire arena?

18 MS. SNYDER: Yes. They were required to submit
19 samples of their work and they -- actually, the work that
20 they have done has been largely in the environmental
21 field doing remediation of -- environmental remediation
22 in the aerospace industry and other large corporate firms
23 have been their clients. The bid amounts ranged in the
24 amount, which is low for Environmental Engineering, at
25 \$98,291 up to a high of \$299,000 with two bids in the

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1 middle at \$154,000 and \$186,000.

2 BOARD MEMBER EATON: Are they a California-based
3 company?

4 MR. SNYDER: Yes.

5 BOARD MEMBER EATON: Out of?

6 MR. SNYDER: They're from the southern
7 California area. Hawthorne, California.

8 BOARD MEMBER EATON: Have they done tires
9 before?

10 MR. SNYDER: Not specifically tire work that I
11 saw. They have a chemical engineering expert on their
12 panel and again a lot of environmental remediation work,
13 which is I think similar, although the constituents would
14 be somewhat different.

15 BOARD MEMBER EATON: Okay.

16 MS. GILDART: Actually, that concern was one of
17 the reasons we set the contract up to require the
18 workshop with a panel of experts. Our feeling was that
19 there really isn't a large body of expertise on this
20 issue in the country, that we need to gather bits and
21 pieces from around about, and the idea with the
22 contractor was that they would be able to pull that
23 together, synthesize it for us and develop a report with
24 recommendations.

25 We further offered within this same contract the

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1 ability to actually collect data, if necessary. What
2 we're hoping is that from the various fires that have
3 occurred in different locations around the country, there
4 may be existing data that can help us with this report
5 writing.

6 MR. SNYDER: And in addition, the panel of eight
7 experts is subject to our approval prior to them
8 selecting the eight participants. Between Bob Fujii and
9 Tom Micka and Todd Thalhamer and myself, we're going to
10 come up with a list of 12 to 16 experts that we think
11 should be included on this panel and then help the
12 contractor in choosing this panel of experts.

13 BOARD MEMBER EATON: Don't mistake my comments.
14 It's just someone new, and I'm happy to see someone new
15 in this arena, so we're just trying to kind of find out
16 who they are.

17 CHAIR MOULTON-PATTERSON: Thank you, Mr. Eaton.

18 BOARD MEMBER EATON: Thank you.

19 CHAIR MOULTON-PATTERSON: Mr. Paparian.

20 BOARD MEMBER PAPARIAN: Are we involving some of
21 the other state agencies, OEHHA, Toxics, Water Board, in
22 soliciting ideas for the experts to include and --

23 MR. SNYDER: Yes. They were -- we were going to
24 solicit some other agencies to participate and invite
25 them to participate in the workshop.

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1 BOARD MEMBER PAPARIAN: Good. Thanks.

2 BOARD MEMBER JONES: Madam Chair.

3 CHAIR MOULTON-PATTERSON: Thank you for bringing
4 that up, Mr. Paparian.

5 Mr. Jones.

6 BOARD MEMBER JONES: Part of the discussion
7 around collection of data, when -- is this going to be a
8 dry data collection?

9 MS. GILDART: No. We're going to set fire to a
10 pile of tires and get our data.

11 (Laughter)

12 BOARD MEMBER JONES: You're going to use
13 existing data or are you going to go out and do sampling?

14 MS. GILDART: The option exists to gather
15 additional data. We are hoping that there are sufficient
16 data from fires that have occurred already, that they
17 won't need to, but there was sort of a reserve fund, if
18 you will, allowing them to do such actual sampling and
19 analysis.

20 BOARD MEMBER JONES: I think that if this thing
21 is going anywhere at all where you're going to go to
22 either Royster, Filbin, to do testing, I would say you
23 don't go on that property without the Water Board, DTSC
24 and others that are aware of what the protocols are going
25 to be because I think the one thing we don't want to do

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1 here in trying to get an assessment of damage to fires is
2 to have some level of information that may not be as
3 thorough as some of the other agencies need and skew the
4 ongoing work that needs to be done there. So I would ask
5 you to be aware of what those other agencies are going to
6 need.

7 I think that one of the things that I hope gets
8 looked at is that the fire at Royster was in a bowl, was
9 in a rock quarry that was basically a bowl and acted very
10 differently than a Filbin tire fire which was in a canyon
11 and had released -- had natural release points for oil
12 that was being generated as part of that fire.

13 Those kinds of characteristics need to be
14 identified, I think, in this report because those types
15 of fires are going to put out -- are going to have
16 different characteristics and we need to be able to give
17 a full picture, not a -- you know what happens in Filbin
18 is not I think the -- we were -- the land facilitated the
19 ability to put that fire out, as I understand it, as
20 opposed to being in a bowl. So I don't think we need to
21 give -- I think we need to get as much information as
22 possible so we know how we can do those kinds of things
23 and provide that information.

24 CHAIR MOULTON-PATTERSON: Thank you, Mr. Jones.

25 Do we have a motion?

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1 BOARD MEMBER JONES: Madam Chair.

2 CHAIR MOULTON-PATTERSON: Yes, Mr. Jones.

3 BOARD MEMBER JONES: I have a motion and I want
4 to ask Mr. Chandler a question after we vote on it.

5 CHAIR MOULTON-PATTERSON: Okay.

6 BOARD MEMBER JONES: I want to move adoption of
7 Resolution 2000-337 to approve the -- consideration of
8 the approval of Environmental Engineering Contracting,
9 Inc. as contractor for a tire pile fire assessment
10 contract.

11 BOARD MEMBER PAPARIAN: Second.

12 CHAIR MOULTON-PATTERSON: Thank you.

13 We have a motion by Mr. Jones, seconded by
14 Mr. Paparian for Resolution 2000-337 for approval of
15 Environmental Engineering and Contracting, Inc. as
16 contractor for the tire pile fire assessment contract.

17 Please call the roll.

18 BOARD SECRETARY: Eaton.

19 BOARD MEMBER EATON: Aye.

20 BOARD SECRETARY: Jones.

21 BOARD MEMBER JONES: Aye.

22 BOARD SECRETARY: Medina.

23 BOARD MEMBER MEDINA: Aye.

24 BOARD SECRETARY: Paparian.

25 BOARD MEMBER PAPARIAN: Aye.

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1 BOARD SECRETARY: Roberti.

2 BOARD MEMBER ROBERTI: Aye.

3 BOARD SECRETARY: Moulton-Patterson.

4 CHAIR MOULTON-PATTERSON: Aye.

5 Thank you very much. I'd like to call forth
6 Mr. Schiavo now. Before we have our morning break, we
7 only have one item in this group, so if that's okay with
8 everyone.

9 BOARD MEMBER JONES: Can I ask a quick question?

10 CHAIR MOULTON-PATTERSON: I'm sorry, Mr. Jones.
11 Yes. Go ahead.

12 BOARD MEMBER JONES: Not a problem.

13 I'm just wondering, Madam Chair, every -- I'd
14 like to see as an item come forward a little discussion
15 about the different types of waste that we contract this
16 stuff out. Today we saw an IFB. We've seen RFPs, RFQs,
17 NOFAs. We see all these different formats all within the
18 contracting scope but it's kind of like it kind of
19 depends -- I don't know what it depends on. I don't know
20 why certain ones are being used.

21 I don't know if consistency is something that we
22 could actually kind of get at some time because I'd like
23 to see an item come forward that really discussed the
24 different types of contracting processes and how we put
25 out bids so that the Board can have a little -- so I

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1 could have a better understanding and maybe we could have
2 a little interaction as to what makes sense and doesn't
3 because it amazes me that every contract has a different
4 acronym and I'm not sure why. So if you don't mind.

5 MR. CHANDLER: Absolutely.

6 BOARD MEMBER JONES: I don't know what other
7 Board Members --

8 MR. CHANDLER: Certainly. We can do that. A
9 lot of it dictates in the funds themselves govern what
10 type of bid process is suitable or eligible. Sometimes
11 it's the fiscal year. If we're looking at seeing money
12 not being eligible for expenditure, we often look to
13 interagency agreements with universities simply because
14 those can be entered into through just that interagency
15 agreement. So not only will we describe the different
16 mechanisms but perhaps what circumstances sometimes lead
17 us to recommending a certain or going after a certain bid
18 process or procedure.

19 We'll certainly do that and I'll get back to you
20 as to which board meeting I anticipate us bringing that
21 forward at.

22 BOARD MEMBER JONES: I had questioned why we
23 were giving a contract out with certain conditions and
24 was told by our legal staff or our head legal counsel
25 that the only time we could really have any input as

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1 Board Members is when we did the scope of work. So that
2 kind of freaked me out a little bit as to why, if that
3 was the only time, we hadn't been told that before or why
4 I hadn't been told that before. So I think I want to
5 know a whole lot more about this process.

6 CHAIR MOULTON-PATTERSON: Thank you, Mr. Jones,
7 for bringing that up.

8 Mr. Schiavo, I misspoke. We have two items.
9 Item Number 4, 5, 6 -- Items Number 4, 5, 6, 7 and 9 were
10 adopted on the consent calendar, so Item Number 8 and
11 then we have a brief status report.

12 Item Number 8.

13 MS. LAMBERT: Good morning, Chairman
14 Moulton-Patterson and Members of the Board. My name is
15 Kimya Lambert and I'm with the Board's Office of Local
16 Assistance.

17 The item before you is the consideration of
18 staff recommendation on the adequacy of the amended
19 Non-Disposal Facility Element for the cities of Ukiah,
20 Fort Bragg, Willits, and the unincorporated area of
21 Mendocino, Mendocino County. This item was pulled off of
22 the consent calendar to correct an error in the amended
23 NDFE. Staff from the Office of Local Assistance,
24 Permitting and Inspection, and the County of Mendocino
25 consulted with the Board's legal counsel and agreed upon

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1 the correct capacity for the proposed Ukiah Transfer
2 Station.

3 The facility capacity as listed in the
4 Environmental Impact Report for the transfer station was
5 presented to the Board of Supervisors and the Local Task
6 Force as 400 tons per day. However, the capacity listed
7 in the amended NDFE is 300 tons per day. According to
8 county staff, when the amended NDFE was circulated, it
9 identified the capacity as 300 tons per day. County
10 staff believes that the error was a result of confusing
11 the 300-ton-per-day permitted peak capacity at the Ukiah
12 Landfill with the Ukiah Transfer Station's 400 tons per
13 day capacity. The Ukiah Landfill is closing soon and the
14 Ukiah Transfer Station will replace it.

15 The Environmental Impact Report for the transfer
16 station lists the capacity as 400 tons per day and the
17 Board of Supervisors approved the Environmental Impact
18 Report for that facility the day before they approved the
19 amended NDFE. In addition, the Local Task Force
20 discussed the EIR and approved the NDFE at the same
21 meeting.

22 In conclusion, based upon the aforementioned
23 information, staff is satisfied that adequate local
24 review for the 400-ton-per-day capacity took place and
25 recommends approval of the amended NDFE. The County has

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1 submitted a corrected page and I'd like to submit the
2 correction for addition to the public record. I
3 apologize for not having copies for the entire Board, but
4 I do have enough for five at least.

5 This concludes my presentation. Do you have any
6 questions?

7 CHAIR MOULTON-PATTERSON: Thank you. Any
8 questions?

9 BOARD MEMBER JONES: Madam Chair.

10 CHAIR MOULTON-PATTERSON: Mr. Jones.

11 BOARD MEMBER JONES: I'll move adoption of
12 Resolution 2000-313, consideration of staff
13 recommendation on the adequacy of the amended
14 Non-Disposal Facility Element for the cities of Ukiah,
15 Fort Bragg, Willits, and the unincorporated area of
16 Mendocino, Mendocino County, to reflect the change -- to
17 include the reflection of the change mentioned before.

18 BOARD MEMBER EATON: Second.

19 CHAIR MOULTON-PATTERSON: Thank you.

20 We have a motion by Mr. Jones, seconded by
21 Mr. Eaton, for approval of Resolution 2000-313.

22 Please call the roll.

23 BOARD SECRETARY: Eaton.

24 BOARD MEMBER EATON: Aye.

25 BOARD SECRETARY: Jones.

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1 BOARD MEMBER JONES: Aye.

2 BOARD SECRETARY: Medina.

3 BOARD MEMBER MEDINA: Aye.

4 BOARD SECRETARY: Paparian.

5 BOARD MEMBER PAPARIAN: Aye.

6 BOARD SECRETARY: Roberti.

7 BOARD MEMBER ROBERTI: Aye.

8 BOARD SECRETARY: Moulton-Patterson.

9 CHAIR MOULTON-PATTERSON: Aye.

10 Item Number 10, update on status of compliance
11 orders for 95-96.

12 MS. SULLIVAN: Good morning, Chair and Members
13 of the Board. My name is Carolyn Sullivan and I
14 represent the Office of Local Assistance, and I will be
15 updating you on the current status of those jurisdictions
16 who were issued compliance orders as part of the
17 1995-1996 biennial review process.

18 Since the last compliance order update at the
19 May board meeting, 19 quarterly or final status reports
20 were due. 17 jurisdictions have submitted their status
21 reports on time and are meeting the requirements of their
22 compliance orders. The other two jurisdictions have
23 requested extensions for completing their new base year
24 studies and submitting their final status reports.

25 Additionally, seven other jurisdictions have been removed

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1 from compliance.

2 Of the 65 jurisdictions that went on compliance
3 in 1999, 50 remain on compliance. Of the 50, staff
4 anticipate that 22 will be removed from compliance in the
5 next three months. An informational table has been
6 prepared for you which gives detailed information for
7 each jurisdiction on compliance, including the method the
8 jurisdictions selected for completing the compliance
9 order, the final report due date, and the jurisdiction's
10 current status.

11 This concludes my presentation and I am open for
12 any questions at this time.

13 CHAIR MOULTON-PATTERSON: Thank you,
14 Ms. Sullivan.

15 Questions?

16 BOARD MEMBER JONES: Real quick question.

17 Those jurisdictions that are doing new base
18 years, are we also looking at the programs? I mean we
19 don't want to see a hundred percent compliance by making
20 sure the numbers are worked.

21 MS. MORGAN: Yes, we are, Board Member Jones.
22 When the new base year is submitted, when we present it
23 to the Board, it's in combination with the 97-98 biennial
24 review which requires us to look at the programs.

25 BOARD MEMBER JONES: Okay. Thank you.

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1 CHAIR MOULTON-PATTERSON: Any other questions?

2 Okay.

3 We'll take a 15-minute break and be back at
4 about five after 11:00. Thank you very much.

5 (Recess taken)

6 CHAIR MOULTON-PATTERSON: I'd like to call the
7 meeting back to order, please. Okay. We have Waste
8 Prevention and Market Development. Ms. Wohl, Item Number
9 11 was on consent, was approved on consent. We're on
10 Item Number 12.

11 Before we begin, anyone have any ex partes to
12 disclose? Mr. Eaton.

13 BOARD MEMBER EATON: None, thank you.

14 CHAIR MOULTON-PATTERSON: Thank you.

15 Mr. Jones.

16 BOARD MEMBER JONES: One, Denise Delmatier from
17 Norcal.

18 CHAIR MOULTON-PATTERSON: Thank you.

19 Mr. Medina.

20 BOARD MEMBER MEDINA: Denise Delmatier from
21 Norcal.

22 CHAIR MOULTON-PATTERSON: Okay.

23 Senator Roberti.

24 BOARD MEMBER ROBERTI: No ex partes.

25 CHAIR MOULTON-PATTERSON: Thank you.

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1 We'll go ahead with Item Number 12.

2 MS. WOHL: Good morning Madam Chair, Board
3 Members.

4 This morning we'll start with three loan-related
5 items. The first two items are for loan applications and
6 the third is a policy item covering project eligibility
7 and a priority system to fund applications. The loans
8 will be presented first to clearly delineate that they
9 will be held to the existing criteria. The policy item
10 will be heard after the loans. If the Board approves any
11 changes, staff is proposing that the new criteria will
12 not become effective until August 1st and, therefore, it
13 will only affect loans approved after that date.

14 For this fiscal year, 2000-2001, the Recycling
15 Market Development Revolving Loan Program is budgeted to
16 fund \$10 million in new loans. The Board previously
17 approved five loans last year totaling \$4,016,075 that
18 will fund this fiscal year. Today the Board will
19 consider two loans totaling \$2,153,000. If these loans
20 are approved and funded, then there remains \$3,830,925
21 for new loan applications this year.

22 I'd now like to turn the presentation over to
23 Jim La Tanner who will present the first three items.

24 CHAIR MOULTON-PATTERSON: Thank you, Ms. Wohl.

25 Mr. La Tanner.

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1 MR. LA TANNER: Agenda Item Number 12 presents
2 an RMDZ loan to Transfilm, Inc. in the amount of
3 \$153,000. Of this, \$75,000 is for equipment and \$85,000
4 for working capital which would be used to revise and
5 reconfigure the production line and two months of reserve
6 to take care of expanded operations.

7 The RMDZ loan represents 33 percent of the
8 \$459,000 project. The company takes decommissioned movie
9 film, extracts various plastic compounds and sells
10 pellets and flakes to various companies and brokers. As
11 a result of this loan, an additional 2,500 tons of movie
12 film is projected to be diverted from California
13 landfills annually.

14 Staff recommends the Board adopt Resolution
15 2000-319.

16 CHAIR MOULTON-PATTERSON: Thank you,
17 Mr. La Tanner.

18 Any questions?

19 BOARD MEMBER EATON: I'll move -- let me get the
20 correct resolution. Senator Roberti, your area, Sun
21 Valley.

22 BOARD MEMBER ROBERTI: Sun Valley, my former
23 district. Yes, thank you.

24 BOARD MEMBER EATON: Please.

25 BOARD MEMBER ROBERTI: I'll move Resolution

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1 2000-319.

2 BOARD MEMBER EATON: And I'll second.

3 CHAIR MOULTON-PATTERSON: Thank you.

4 Motion by Senator Roberti, seconded by
5 Mr. Eaton, for Resolution 2000-319 for approval of the
6 Recycling Market Development Revolving Loan Program
7 application for Transfilm, Inc.

8 Secretary, please call the roll.

9 BOARD SECRETARY: Eaton.

10 BOARD MEMBER EATON: Aye.

11 BOARD SECRETARY: Jones.

12 BOARD MEMBER JONES: Aye.

13 BOARD SECRETARY: Medina.

14 BOARD MEMBER MEDINA: Aye.

15 BOARD SECRETARY: Paparian.

16 BOARD MEMBER PAPARIAN: Aye.

17 BOARD SECRETARY: Roberti.

18 BOARD MEMBER ROBERTI: Aye.

19 BOARD SECRETARY: Moulton-Patterson.

20 CHAIR MOULTON-PATTERSON: Aye.

21 Item Number 13.

22 MR. LA TANNER: Agenda Item 13 presents an RMDZ
23 loan to Oceanside Glasstile in the amount of \$2 million.
24 Of this, \$1.7 million is for real estate. A bank is
25 going to do a construction loan and we're going to do

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1 part of the take-out on that. The remaining funds,
2 \$200,000, will be for equipment and \$100,000 for working
3 capital. The RMDZ loan represents 66 percent of the
4 total project which is \$3,049,000.

5 The company takes used glass and manufactures
6 glass tile for flooring, counter tops and wall tiling for
7 bathrooms and kitchens. As a result of this loan, an
8 additional 400 tons of glass is projected to be diverted
9 from California landfills annually.

10 Staff recommends the Board adopt Resolution
11 2000-320.

12 CHAIR MOULTON-PATTERSON: Thank you,
13 Mr. La Tanner.

14 Before we go on, Mr. Paparian, did you have any
15 ex partes from the break?

16 BOARD MEMBER PAPARIAN: No.

17 CHAIR MOULTON-PATTERSON: Okay. Thank you.

18 We'll go on with any questions or discussion of
19 Item Number 13. Hearing none, can I ask for a motion
20 please?

21 BOARD MEMBER EATON: I'll move that we adopt
22 Resolution 2000-320.

23 BOARD MEMBER JONES: I'll second.

24 CHAIR MOULTON-PATTERSON: Thank you, Mr. Eaton.

25 Motion by Mr. Eaton, seconded by Mr. Jones, for

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1 Resolution 2000-320 for approval of the Recycling Market

2 Development Revolving Loan Program application for

3 Oceanside Glasstile Company.

4 Secretary, please call the roll.

5 BOARD SECRETARY: Eaton.

6 BOARD MEMBER EATON: Aye.

7 BOARD SECRETARY: Jones.

8 BOARD MEMBER JONES: Aye.

9 BOARD SECRETARY: Medina.

10 BOARD MEMBER MEDINA: Aye.

11 BOARD SECRETARY: Paparian.

12 BOARD MEMBER PAPARIAN: Aye.

13 BOARD SECRETARY: Roberti.

14 BOARD MEMBER ROBERTI: Aye.

15 BOARD SECRETARY: Moulton-Patterson.

16 CHAIR MOULTON-PATTERSON: Aye.

17 Item Number 14 was pulled. We'll go on to Item

18 Number 15.

19 MR. LA TANNER: Agenda Item 15 presents two

20 different policy issues for the RMDZ Loan Program.

21 The first is to update the June '99 project

22 eligibility criteria that the Board reviews on an annual

23 basis. The second section is to establish a priority

24 system to fund applications since the amount will exceed

25 the availability of funds. The agenda item is to

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1 encourage a Board discussion of project eligibility and a
2 priority system to fund applications because of the
3 increased demand.

4 Staff solicited input from the Loan Committee,
5 the 40 RMDZ zone administrators, JTR Partners for this
6 item. The proposed changes to the project eligibility
7 criteria are shown in Attachment A while the proposed
8 priority system is shown in Attachment B.

9 In summary, on Attachment A to update the
10 project eligibility, there are three main changes. Staff
11 is recommending to delete a \$2 million set-aside for JTR,
12 Jobs Through Recycling Partnership. These businesses
13 would still be eligible for RMDZ funds in the same manner
14 as businesses within the 40 zones which is a first-come,
15 first-served basis.

16 The second project change is under the
17 definition of reuse. Staff is recommending to clarify
18 that remanufacturing end products would be eligible such
19 as rebuilding broken and odd-sized wood pallets into
20 usable pallets.

21 The third change shown on page 4, staff is
22 recommending to delete lending for public infrastructure
23 and capital improvements. In February 2000, the Board
24 approved continuing to lend to public entities in the
25 cumulative maximum amount of \$2 million per year under a

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1 process using a contract instead of standard loan docs.
2 During the past ten years of the loan program, the loan
3 program has only made one loan to a local government
4 entity.

5 Attachment B is staff's recommendations to
6 present how to better equate the demand for the loan
7 program with the limited supply. There are a number of
8 changes in this area. One again is to delete lending to
9 local entities. The second change is to increase the
10 points. Currently we charge a half percent point based
11 on the loan amount collected at loan closing, which can
12 be financed. In April '98, the fee was 3 percent and the
13 Board lowered it to one and a half, and subsequently in
14 July '99 it went from one and a half down to a half, and
15 we currently charge a half. We're proposing to increase
16 that to 1 percent.

17 Staff was also recommending to change the
18 interest rate. The interest rate on the loan program is
19 based on SMIF. The Surplus Money Investment Fund is
20 calculated by the Controller's office, which was
21 announced in January and July. As of 15 minutes ago,
22 that rate had not been calculated. Currently the rate is
23 5.3 percent.

24 Staff is recommending to charge on all loans
25 beginning August 1st a rate of SMIF plus one and a half

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1 percent, which is still well below prime. Staff's
2 estimate is that the SMIF rate may increase from 5.326,
3 but we do not have confirmation yet from the Controller's
4 office, so if we added one and a half, the rate would be
5 seven and a half percent.

6 The final change staff is recommending is to
7 limit the number of times a company can obtain an RMDZ
8 loan. Presently a company can come to the Board as often
9 as they want to apply for a loan under the condition that
10 subsequent loans be for a new and different project than
11 from before. Several borrowers have more than one loan.
12 Some have two and one has three loans.

13 Staff is recommending that the company can come
14 to the loan program an unlimited number of times but that
15 they may not have more than \$2 million principal
16 outstanding balance at any one time from the loan
17 program. So if a loan pays off, they could come back and
18 borrow the difference again.

19 That concludes my presentation.

20 CHAIR MOULTON-PATTERSON: Thank you,

21 Mr. La Tanner.

22 We have speakers. Would the Board prefer to
23 hear the speakers before their discussion? Thank you.

24 Mr. Larsen, George Larsen.

25 MR. LARSEN: Madam Chair, Members, George Larsen

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1 representing Waste Management and the Davis Street
2 Transfer Station.

3 Just a couple comments, not specific to the
4 proposals and changes being suggested but just general
5 comments about the positive nature of the RMDZ program
6 and Waste Management. In particular, Davis Street
7 Transfer Station has benefited by the RMDZ program.
8 Through a USEPA grant they got through what's called the
9 JTR 98 Project Team where there was a set-aside of monies
10 from the RMDZ loan program to assist in that project.

11 Where we feel the positive nature of this
12 program, it should be a high priority for the Board to
13 expand this program and increase the amount of monies
14 available, and I understand that there are some
15 reductions and maybe that's driving the need to tighten
16 up the criteria.

17 We strongly endorse the program and strongly
18 encourage the Board to take another look at this and, if
19 possible, to identify additional funding to support this
20 program in the future.

21 Thank you.

22 CHAIR MOULTON-PATTERSON: Thank you, Mr. Larsen.
23 John Davis, Mojave Desert RMDZ.

24 MR. DAVIS: Madam Chair and Board Members, I
25 wanted to just pass this around for you to look at.

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1 This is the conference workbook from the Paper
2 Recycling 2000 conference that was held last month in
3 Atlanta. If you look at the front cover and the back
4 cover of the workbook, you'll see that it was sponsored
5 by yourselves, the California Integrated Waste Management
6 Board, the Kern County RMDZ, Long Beach RMDZ, and the
7 Mojave Desert RMDZ. This is the first of what we hope
8 will be an ongoing effort to remarket the program and
9 ultimately revision and reformulate the program with the
10 input from the zone administrators.

11 We've done a lot of work with yourselves over
12 the last couple of years in getting to this point even,
13 and I think our comments regarding the loan program are
14 that we know we did \$12.5 million last year. We're
15 prepared to go out and undertake a coordinated,
16 comprehensive statewide marketing effort. We think we
17 can do \$25 million the following year. We think we could
18 reach \$50 million or more as we begin to increase the
19 absorption of the loan program.

20 Obviously that raises an issue, and we're here
21 to ask that we have the opportunity following your action
22 today to work together, to go out and look for sources of
23 funds that we can leverage into this program. We are
24 excited about the future of it and we'd like to make it a
25 success well beyond the limited resources that you have

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1 available. We think we've just begun to break into the
2 mainstream industries. We've got a lot of ideas about
3 how to do that and we just ask for your support on that.

4 I have one comment on the recommendations. I've
5 always thought that lending to local agencies might be
6 the most appropriate way to secure a financing. If you
7 have an eligible applicant who needs to do a street
8 improvement, you may be better off lending to the local
9 agency that's going to be there long-term and own that
10 street than to loan to a business that may fold its tent.
11 So I know that lending to a local agency just to build a
12 road without a business there, I wouldn't support that
13 and I don't think any of the ZAs would support that, but
14 if you've got a real business and you can lend for
15 improvements that are necessary to bring that business
16 in, I would like to see you leave the door open to that.

17 Thank you and we do look forward to the future.

18 CHAIR MOULTON-PATTERSON: Thank you, Mr. Davis.

19 BOARD MEMBER JONES: Madam Chair, can I ask
20 Mr. Davis a question?

21 CHAIR MOULTON-PATTERSON: Yes. Mr. Jones.

22 BOARD MEMBER JONES: First I have to apologize.
23 I didn't mean to swallow my gum when you said \$50
24 million, but that's about the IMWA fund total.

25 If -- because I agree with you, and for the

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1 benefit of the newer Members, we didn't really advertise
2 loans to local governments. The fact that only one came
3 forward in ten years in my recollection because that's
4 all that came forward and tried to make the thing work,
5 and it was a recycling business that this person had put
6 huge amounts of money into improvements throughout the
7 whole area but they needed one road that was going to
8 actually benefit three other parcels. I don't think they
9 were his parcels or whatever and the City wanted to do
10 that and they had earmarked those would be RMDZ-type
11 entities because we lent the \$300,000 for the road
12 improvements.

13 My question, John, is that if in that kind of
14 scenario where one business goes in, there's a couple
15 other lots available that could be earmarked towards that
16 kind of activity or some kind of a recycling market zone
17 activity, would that jurisdiction look at those entities
18 and help -- have them take a fair share of that loan
19 repayment? Is that normally the way it would work in a
20 jurisdiction?

21 MR. DAVIS: Normally -- the deals I've worked on
22 where you're improving an area beyond the needs of a
23 single user, if there were six parcels on that street and
24 they were all of equal size, then ultimately each of
25 those developed parcels would pay one-sixth of the cost.

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1 It's a lot more difficult if you have people pay the
2 costs up front.

3 BOARD MEMBER JONES: And have that property
4 owner go try to get a sixth from each.

5 MR. DAVIS: Paying and paying and paying in the
6 hopes that someone -- but once someone comes along, it's
7 not at all unusual to have a reimbursement agreement or a
8 condition of approval on those parcels that they pay a
9 pro rata share and then that becomes money that comes
10 back into the pot.

11 If a local agency in that case wanted to take
12 out the loan for the improvements, they would have to
13 look at various repayment sources. It might be the
14 redevelopment agency or it might be the reimbursements
15 from the other businesses. The other businesses may not
16 be recycling-based businesses, but you tag the loan to
17 the recycling-based business as long as you had a
18 repayment agreement for the full amount. Then it's up to
19 the local agency to recover the money.

20 Some do it on a larger scale. Some say the
21 whole street system is an integral whole and they collect
22 fees throughout the jurisdiction that goes into the
23 street system and provides a repayment process as well.

24 CHAIR MOULTON-PATTERSON: Mr. Eaton.

25 BOARD MEMBER EATON: I just have one question of

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1 staff, and it's really just for clarification purposes
2 and I talked to Mr. Block briefly.

3 Could you look in Attachment A, first page? It
4 was 15-16 on mine. It reads the Recycling Market
5 Development Revolving Loan Program July 2000 project
6 eligibility criteria. Did we have a chance to run this
7 by our planning, Mr. Schiavo, the language? Because my
8 understanding is that the language here -- and it's
9 really not -- it's really so that we don't cut anyone
10 out, but the language that's in the -- where it starts
11 the paragraph eligible projects, the materials must have
12 been identified as being landfilled in the 1990 waste
13 characterization studies as reported by the local
14 jurisdiction.

15 My understanding is we've had other
16 jurisdictions who have waste characterization studies in
17 '91 and '92. So would that delete them?

18 MR. LA TANNER: No, that would not delete them.
19 Each time we get a loan, the application is -- certain
20 information is given to DPLA for their review to
21 determine if the material was going to a landfill or not
22 and that's --

23 BOARD MEMBER EATON: Is it necessary to have
24 1990? I'm just saying --

25 MR. LA TANNER: No, we can delete the date.

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1 BOARD MEMBER EATON: And what is allowed for new
2 products that may have been landfilled and subsequent
3 thereto? There may be new products that would come on
4 that would be landfilled. Is there an exception to that?

5 MR. LA TANNER: There's no exception to that.
6 If we can verify it's going to a landfill --

7 BOARD MEMBER EATON: So our criteria doesn't
8 hurt us if it's strictly construed the way you have it.

9 MR. LA TANNER: Correct.

10 BOARD MEMBER EATON: Okay.

11 CHAIR MOULTON-PATTERSON: We have additional
12 speaker slips. Mr. John McClurg, President of Fire and
13 Light Originals.

14 MR. MC CLURG: Good morning. You have a lengthy
15 agenda so I'll keep my comments brief.

16 For those of you who aren't familiar with our
17 company, we manufacture glass tableware and gift items
18 using recycled glass. Currently we use about 132 tons of
19 recycled glass per year and about 18 tons of cardboard a
20 year. We employ 26 people and we have about 700
21 customers nationwide.

22 I'm here to encourage you to look at other
23 alternatives. If the number of applicants for this loan
24 program are high, and I'm glad they are, if they're high
25 I would encourage you to look at other means of reducing

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1 those applicants, maybe things like re-looking at the
2 diversion goals or job creation goals.

3 I think the best way for me to make point is to
4 give you quickly a real-life example of some of the
5 things we face. We're in the gift industry where new is
6 everything. I just last night, a few hours ago, I got
7 back from two trade shows back east where we market our
8 product. If you're not constantly developing new product
9 in our market, you're out of business.

10 The market, in our case, demand is a bright new
11 yellow color. We're known for our bright colors. We
12 developed that color day one using virgin glass. We had
13 just the right color but we kept pushing, spent thousands
14 of dollars over several months, did 21 test melts, shut
15 down production for two weekends in order to develop a
16 formula using recycled glass. Just doing that one color
17 will allow us to divert another 26 tons per year.

18 We're able to do that -- we're able to spend
19 that extra money and go forward because of programs like
20 yours. Although right now we don't have a loan through
21 your program, I've been talking to your staff for almost
22 two years now about an upcoming project.

23 Just last week we made a bid on a transfer
24 station building that is about to be torn down. I guess
25 we'll take recycling to its ultimate. Our plan is to

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1 convert this transfer station into a working glass
2 factory which will allow to us triple our production.
3 Instead of hauling garbage out of the building, we'll be
4 shipping product nationwide, in some cases
5 internationally.

6 The proposed increase in the interest rate is
7 enough. It's not a lot. It's only a point here and a
8 point there, but it's enough that it could very likely
9 kill that project. For us in the recycling business, to
10 keep pushing forward and trying to develop new products
11 using recycled glass, we need that incentive to do it.
12 In our case glass, there's a hundred and one variables
13 every day that can go wrong with glass, and you throw in
14 recycled glass with its contaminants and its varying
15 chemical compounds and you've just added to the number of
16 potential problems.

17 I would like to encourage you to postpone action
18 on this until you've looked at some other alternatives.
19 Thanks very much.

20 CHAIR MOULTON-PATTERSON: Thank you,
21 Mr. McClurg.

22 Bobbi Park, Placer County Office of Economic
23 Development.

24 MS. PARK: Good morning, Madam Chair, Board
25 Members. Again, my name is Bobbi Park and I represent

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1 Placer County Office of Economic Development. I'm also
2 the Zoning Administrator for Placer County. I'm here to
3 encourage you to possibly delay any action on this agenda
4 item and for the reasons I'll state and I'll be brief.

5 We have two projects that we're working on in
6 Placer County right now. One of them I'm sure you've
7 heard of, the Sunset Industrial Area Master Use Permit,
8 which is also heavily inundated with recycling-based
9 companies, and a material recovery facilities operation
10 is also housed down there. So we see a real connection
11 with recycling-based clean industry companies wanting to
12 locate there with high tech and R&D companies.

13 The other project that we've been working on is
14 the Forest Hill Mill Reuse Project, and it's co-sponsored
15 through California Trade and Commerce and the EPA,
16 Environmental Protection Agency. They're co-sponsoring
17 it. What we're doing is taking a brown field site in
18 Forest Hill, California, a very rural area, and
19 converting a closed mill site where 300 people lost their
20 jobs in 1993 when the lumber mill closed, and we're
21 reusing that and turning it into a mixed use project.

22 We will also have affordable housing. We would
23 like to take continued education there through our local
24 college, and a new high school is going in adjacent to
25 the site as well, thanks to a bond measure that passed

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1 not too long ago.

2 With that, if there's any questions, I'll leave
3 you to your meeting.

4 CHAIR MOULTON-PATTERSON: Thank you very much.

5 MS. PARK: I'd also like to thank you for the
6 incentive funds. You're seeing the results of what those
7 incentive funds are doing with our marketing.

8 CHAIR MOULTON-PATTERSON: Thank you very much.

9 MS. PARK: Thank you.

10 CHAIR MOULTON-PATTERSON: Board Members.

11 BOARD MEMBER EATON: Could I ask you a question?

12 MS. PARK: Yes.

13 BOARD MEMBER EATON: Is the delay you want us to
14 do based upon the public entity portion as being deleted?

15 MS. PARK: Yes, it is. I'm sorry. For the
16 local government. We feel that would be a positive thing
17 to leave in there.

18 BOARD MEMBER EATON: I just wanted to make clear
19 that was the point.

20 BOARD MEMBER JONES: Madam Chair.

21 CHAIR MOULTON-PATTERSON: Mr. Jones.

22 BOARD MEMBER JONES: I agree with you. No, I'm
23 not going to ask you a question. You can sit down. It's
24 okay.

25 (Laughter)

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1 MS. PARK: I can do this all day.

2 (Laughter)

3 BOARD MEMBER JONES: I agree with you. I do
4 think the local government does have to stay in.

5 I've had Calvin working with the loan staff on
6 some of these, what we've been giving our loans out on.
7 I got real nervous a couple months ago when -- the prime
8 rate right now is 9.5. Our loans are at 5.3 and we're
9 lending \$1.7 million, \$2 million for real estate.

10 That's not what -- that's not what I -- I think
11 that this program has incredible merit and has done an
12 awful lot to foster markets. If you look at this bar
13 that I hope everybody got, the red is equipment, it's
14 sort of the breakdown of what we've lent money on for
15 equipment, and the purple is land. If you notice that
16 when we started we were lending a lot of money on
17 equipment, we were lending a lot of money towards working
18 capital, which makes sense, and little by little we
19 started to see some land. Last year with a 5.3 percent
20 interest rate, we see \$3.3 million in land. I mean,
21 that's 4 percent below prime.

22 Nobody -- anybody in their right mind wouldn't
23 want that rate. Anybody would want that rate, but when
24 we have a fund that is not -- we're not going to be able
25 to, like John said, lend at a rate of \$50 million a year,

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1 I like the idea of trying to team up with other entities
2 to see if we can enlarge that. We tried that with the
3 \$500,000 to go to CAPCO, CPCFA, to try to leverage some
4 of those dollars. And I don't know where we're at with
5 that. I haven't seen any of those come forward. But I
6 think that we need to do that and we need to be smart.

7 I would like us to see the rate and the points
8 at where they're at for equipment, for working capital,
9 those types of things. I'd like to see us take the rate
10 for real estate up to something that is close to prime
11 because if we just become the cheapest venture for
12 somebody to go out and buy a \$2 million piece of
13 property, then what are we really doing?

14 Are we really promoting market development or
15 giving somebody an incredible rate to buy a piece of
16 prime property at 4 percent -- actually it's going to be
17 more. Average loan would probably be prime plus 2, so
18 prime plus 2 is 11. We're at 5. That's 6 percent
19 difference in what loans are going to go out for for
20 property, and I think we really need to think about how
21 do we want to tailor this program to get more businesses
22 to be able to take advantage of these programs as opposed
23 to a few businesses being able to buy land at a cheap
24 price and have an incredible interest rate.

25 Because I can't support real estate loans at 5

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1 percent now that I'm not in the industry where I could
2 take advantage of it.

3 (Laughter)

4 CHAIR MOULTON-PATTERSON: Senator Roberti.

5 BOARD MEMBER ROBERTI: I think I agree with
6 Mr. Jones. However, I would like to know do we have a --
7 like a compilation of all the various reasons that were
8 given as to why real estate suddenly became the --

9 BOARD MEMBER JONES: Darling.

10 MR. LA TANNER: There's several reasons.
11 Assembly Bill 1364 allowed the loan program to go from 50
12 to 75 percent financing of projects from \$1 to \$2 million
13 as a maximum amount and from 10 years to 15 years. One
14 of the reasons behind that is because we had a number of
15 applications from companies that were leasing property
16 that wanted to borrow up to \$500,000, maybe \$600,000 for
17 leasehold improvements whereby if they were able to buy
18 the property they would have that more as an asset.

19 Also, for loan collateral purposes leasehold
20 improvements doesn't really provide much loan collateral
21 because you can never go out and foreclose on it and take
22 them back.

23 Last year, there was actually one loan -- of 18
24 loans made last year, there was one loan that funded real
25 estate in the amount of \$420,000. This year there is a

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1 trend towards financing more real estate. The Board last
2 year approved two more loans, both of which were under a
3 million for real estate. The one presented today for
4 Oceanside Glass is the first loan for real estate that
5 exceeds the \$1 million.

6 Staff has eight more applications in-house that
7 we're currently processing in various stages, none of
8 which are asking for real estate. It's all for
9 equipment, working capital, et cetera.

10 BOARD MEMBER ROBERTI: So to go to the regular
11 commercial market, if they want a leasehold improvement,
12 the possibility is considerably decreased unless they own
13 the property.

14 MR. LA TANNER: Correct. It's harder to get it.
15 Leasehold improvement is a permanent improvement to land
16 where somebody else owns it versus a capital improvement,
17 which is a permanent improvement to land where the owner
18 is the borrower.

19 BOARD MEMBER ROBERTI: I guess the basic
20 presumption is that when we're dealing with recycled
21 material, there's no great reason to own your own
22 property or is that a -- depends on each individual
23 circumstance.

24 MR. LA TANNER: Several examples where
25 composting and organic companies have a lot of leasehold

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1 improvements to land, concrete pads for example, is where
2 they were requesting leasehold improvements.

3 BOARD MEMBER ROBERTI: The nature -- so you're
4 saying they need a leasehold improvement in many cases
5 because of the nature of the recycling business.

6 MR. LA TANNER: Correct.

7 BOARD MEMBER ROBERTI: A recycling business
8 being what it is, it's very hard to get that kind of loan
9 on a leasehold and that's why they have to own the
10 property. That's why you're saying there's a tilt.

11 MR. LA TANNER: There's an advantage.

12 BOARD MEMBER ROBERTI: There's a tilt towards
13 real estate loans.

14 Well, I agree with you. However, I do think
15 that this huge change, it does maybe indicate a
16 possibility people are coming to us for real estate loans
17 only tangentially connected with recycling, sort of along
18 the lines of what Mr. Jones is speaking to. I don't know
19 if I would want to go all the way up to prime rate,
20 though, because just --

21 BOARD MEMBER JONES: Just below prime.

22 BOARD MEMBER ROBERTI: So --

23 MR. LA TANNER: If staff processes and does
24 approve the aps in-house, which doesn't always pan out
25 that way, of the \$10 million this year, then \$3.3 million

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1 would be real estate and the remaining \$6.7 million would
2 be working capital, et cetera.

3 BOARD MEMBER ROBERTI: Okay. Because this last
4 chart we had here -- let me go to that. On this little
5 RMDZ loan program pretty colored chart that I have, is
6 this -- this last year's projecting out that the majority
7 of the loan program is going to be real estate, but what
8 you're saying it sounds more like 30 percent rather than
9 54 percent.

10 MR. LA TANNER: What the chart shows is the
11 loans through today's board meeting, which is just over
12 \$6 million of the \$10 million. What I'm including is the
13 remaining eight applications in-house. None of them are
14 real estate. So if the Board decides to increase the
15 rate for real estate, for example, it would not affect
16 the other eight loans that we have which may use up the
17 remaining \$3.8 million.

18 BOARD MEMBER ROBERTI: Okay. Because my concern
19 in seeing this chart is it does seem like an enormous
20 disparity. From what I'm hearing from your testimony is
21 that it's not quite this severe because the eight
22 remaining loans that we have are not purple loans,
23 they're red, green or yellow.

24 MR. LA TANNER: At this time. That could
25 change.

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1 BOARD MEMBER ROBERTI: That could change? How
2 could that --

3 MR. LA TANNER: Maybe some of the applications
4 in-house don't get approved or do not have adequate
5 collateral and maybe new applications would be received.

6 BOARD MEMBER ROBERTI: Why are these loans
7 pending? Because of when they came in or because we
8 didn't have adequate collateral?

9 MR. LA TANNER: We have received the
10 applications and are in the process of reviewing them
11 before we present them to the loan committee.

12 BOARD MEMBER ROBERTI: Well, Madam Chair, I
13 guess for my own purposes Mr. Jones makes a very
14 important point. I guess I would like to wait a little
15 bit to see what the rest of the year is telling us before
16 we alter the rate for real estate. I would hate to be
17 doing what appears to be the case from this chart and
18 that is being the best real estate loan program on the
19 block.

20 But on the other hand, you make a very
21 convincing point as to the nature as to why we need real
22 estate loans and capital improvements and whatever. So
23 can we -- I would hope we can wait just a couple of
24 months to see what happens to the others, whatever.

25 CHAIR MOULTON-PATTERSON: Thank you, Senator

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1 Roberti.

2 I know I have some real concerns about the real
3 estate portion that Mr. Jones brings up, also. You know,
4 it seems like to me, for myself and for the new Board
5 Members, that this would have been a really good
6 policy -- one of the areas that we really delved into,
7 but I guess at this point --

8 BOARD MEMBER MEDINA: I just had a question in
9 regard to the --

10 CHAIR MOULTON-PATTERSON: Mr. Medina.

11 BOARD MEMBER MEDINA: -- deletion of local
12 government entities. Do they have sources of money other
13 than this?

14 MR. LA TANNER: The primary other source would
15 be redevelopment funds, and the reason that the City of
16 Cloverdale did not offer redevelopment funds is because
17 they saw it as a very difficult process. If they got
18 approved for redevelopment funds, there are a lot of
19 conditions on the project. They did not go for a bond
20 because that has to go for a vote before the citizens,
21 and they didn't feel the citizens would approve a bond
22 because it would basically benefit one or several
23 recycling businesses on one street. So they opted for
24 the RMDZ loan, which we funded 50 percent of the project.

25 CHAIR MOULTON-PATTERSON: Mr. Paparian.

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1 BOARD MEMBER PAPARIAN: A couple questions.

2 For 99-2000, it looks like there was about \$11.5
3 million loaned. For 2000-2001, we have some information
4 here on this chart but -- and then there's some other
5 money available. How much total is going to be available
6 in 2000-2001?

7 MR. LA TANNER: In the current fiscal year, we
8 have budgeted, which is shown in the state budget, to
9 actually fund \$10 million in loans.

10 BOARD MEMBER PAPARIAN: Any estimates for 01-02
11 or 02-03?

12 MR. LA TANNER: Our estimate would be roughly
13 \$8.4 million, but that depends. The biggest factor is
14 that is if loans pay off early, which did happen last
15 year, then more money may become available.

16 BOARD MEMBER PAPARIAN: Any sense of -- I'm
17 sorry if it was in here and I missed it, but the actual
18 dollar impact of the proposed fee increases and stricter
19 criteria and so forth?

20 MR. LA TANNER: We haven't analyzed that part of
21 it.

22 BOARD MEMBER PAPARIAN: Okay. And then
23 Mr. Larsen, and I believe somebody else, suggested we
24 ought to look at other options for increasing the amount
25 of money in the -- amount of money available for loans.

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1 Have you looked at other options? He didn't suggest
2 anything specifically, but he said we ought to look at
3 other options.

4 MS. WOHL: Staff has had some discussions in
5 this area. We did some talking with other state
6 agencies. We've been working with the treasurer's
7 office, but I think we need to -- as was mentioned by one
8 of the speakers, we're more than willing to look at
9 leveraging some of those dollars. We had a conversation
10 with PERS.

11 Obviously those people have different missions
12 than our mission and their money is focused on their
13 processes, but we're very open to looking at leveraging
14 additional funds and we can do that.

15 I did want to say that we did have some cost
16 analysis in here. For example, if you're increasing the
17 rate by a percentage we show you that for every \$100,000
18 what that equates to, so -- but those amounts are minimal
19 in the scheme of issuing loans.

20 I also wanted to comment on the \$10 million cap.
21 That is set in the budget as an estimate, so there is
22 potential flexibility if the Board is looking at spending
23 more of the money that we were setting aside for
24 2001-2002 to be spent now. So you have that flexibility
25 too, but then that -- what we were trying to do is do a

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1 little bit of a balancing act and sort of keep an average
2 \$10 million loan program going. If you take a portion
3 from the next year, you obviously have less in that year
4 to give.

5 BOARD MEMBER JONES: Madam Chair.

6 CHAIR MOULTON-PATTERSON: Thank you.

7 Mr. Jones.

8 BOARD MEMBER JONES: A couple of things. If the
9 budget said \$10 million, I think one of the issues that
10 came up in Visalia was that in fact we had approved \$12
11 million in loans, so that was disturbing.

12 I'm wondering if the Board needs to be more
13 active in setting the exact parameters because if you do
14 the math, really this year you've got about \$8 million
15 left to lend taking into account that you went over by
16 \$2-plus something, if we wanted to stay in that \$10
17 million.

18 I think the other thing that's interesting, and
19 I don't know -- when I had a discussion with this crew, I
20 think prior to the briefings or whatever, we had talked
21 about an issue that I had, and in the item it says that
22 the real estate loans were only \$1.6 million or whatever
23 on page 12. It didn't work out right when you looked at
24 all the ones that we had approved. So then it became how
25 many have been funded? How many have we written the

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1 checks for?

2 So I don't want to get into a discussion here
3 about looking at dollar amounts and saying well, that's
4 not really an accurate dollar amount because we haven't
5 written the check yet, even though the Board approved the
6 loan. Because then I think we're mixing apples with
7 oranges and we need to know what we've approved, what's
8 potentially going out the door.

9 We did a loan to California Bio-Mass for \$1.3
10 million in land and I think it was in last year's --
11 wasn't it in last year's allocation? I don't know. But
12 it's \$1.3 million or \$1.7 million. That's not \$400,000.

13 So, you know, if we want to give \$10 million in
14 loans, the easiest thing to do is to give five real
15 estate loans for \$2 million apiece. That's easy. Or
16 give a whole lot of equipment loans for \$50,000, \$60,000,
17 \$70,000, \$80,000, \$100,000 so you're bringing in five and
18 six loan applications to us every month.

19 I think we do need to have this as a policy
20 discussion, but I would like to -- I don't know if next
21 month is the right time. If there are no real estate
22 loans in the hopper, then I'm comfortable with holding
23 off on any discussion about the rate, but I think that
24 people are going to see -- I think what we have to be
25 aware of, if we have the discussion not in August in

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1 Huntington Beach but maybe the month after, that we're
2 giving people two months' notice that there may be a rate
3 available at 5.3 percent -- not notice but that it's
4 there, and I think that we need to consciously at least
5 say that we're going to talk about that prior to any
6 commitments. Is that reasonable?

7 BOARD MEMBER ROBERTI: I think this definitely
8 calls for review and so I would agree. I guess
9 Huntington Beach is going to be busy.

10 CHAIR MOULTON-PATTERSON: I think we probably
11 have to wait until September, but I do think -- excuse me?

12 BOARD MEMBER JONES: What are the possibilities
13 of doing a moratorium? Not today's actions but a
14 moratorium on real estate loans until we have the
15 discussion. There are none in the hopper.

16 BOARD MEMBER ROBERTI: There are none in the
17 hopper?

18 MR. LA TANNER: Correct.

19 MS. WOHL: Madam Chair.

20 MR. DAVIS: There may be.

21 CHAIR MOULTON-PATTERSON: Ms. Wohl.

22 MR. DAVIS: There may be.

23 CHAIR MOULTON-PATTERSON: Excuse me just one
24 second, Mr. Davis.

25 BOARD MEMBER ROBERTI: I think Mr. Jones does

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1 make a point now that we've been discussing it. Now we
2 may have 40 in the hopper by the time -- as we speak
3 right now.

4 (Laughter)

5 CHAIR MOULTON-PATTERSON: Thank you, Senator
6 Roberti.

7 Ms. Wohl.

8 MS. WOHL: Sure. It's just a matter of process,
9 and it's my understanding that we can bring an item like
10 this forward to you anytime. There's no restriction on
11 an annual review of this eligibility criteria. So you
12 could approve pieces of this now or any piece that you
13 want, which might be to say that we want to eliminate
14 real estate as an option to loan money --

15 BOARD MEMBER JONES: But we don't.

16 MS. WOHL: -- or anything --

17 BOARD MEMBER ROBERTI: My inclination actually
18 is not to. However, there's some strong arguments and
19 maybe we are moving too far in that direction. I just
20 don't know and I want to hear more.

21 I have a question of staff along those lines
22 because you said that one of the problems was it's hard
23 to get a loan for a leasehold improvement. I assume then
24 that means that we will give the loan for a capital
25 improvement. However -- maybe I'm reading this chart

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1 wrong -- the green, which I guess would be the capital
2 improvement, infrastructure expansion improvements, seems
3 to have decreased in the last fiscal year. So it doesn't
4 appear that we're actually giving capital improvements.

5 So sort of reading like it's more that -- our
6 purple loans are just purchase of real estate rather than
7 capital improvements.

8 MR. LA TANNER: There has been a swing. Instead
9 of financing leasehold improvements, more the companies
10 have opted to purchase the real estate.

11 BOARD MEMBER ROBERTI: Yeah. I guess they can
12 opt to purchase the real estate with the improvements
13 already on the real estate.

14 MR. LA TANNER: Then part of our loan proceeds
15 could fund the capital improvements needed to bring
16 this --

17 BOARD MEMBER ROBERTI: But for capital
18 improvements as such independent of a real estate
19 purchase, it doesn't appear -- it appears that's
20 shrinking too.

21 MR. LA TANNER: Correct.

22 BOARD MEMBER ROBERTI: Which -- and gives a
23 little bit more momentum to Mr. Jones's thought that
24 maybe real estate loans are sort of very remotely
25 involved with recycling and more involved with real

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1 estate purchases at a nice rate. I don't know. We don't
2 know. I think it really is something we have to analyze.

3 CHAIR MOULTON-PATTERSON: I'm certainly hearing
4 that the Board want to hear more about this, and if we
5 could have a policy discussion in September -- and did
6 you -- do we need to do anything to -- you say there's no
7 real estate.

8 MS. WOHL: At this point there's nothing
9 pending. Just for clarification, we thought this was a
10 policy discussion. So that's kind of why we brought it
11 forward, to get the discussion going, but if you want
12 additional information we're more than willing to bring
13 it back.

14 CHAIR MOULTON-PATTERSON: I see a lot of
15 questions and I thought -- and I'm not suggesting a
16 full-day workshop, but if we had a little more time to
17 formulate our questions and you could present a little
18 more information for myself and the new Board Members,
19 that would be great.

20 Is that okay with everyone? Okay.

21 BOARD MEMBER ROBERTI: Madam Chair.

22 CHAIR MOULTON-PATTERSON: Yes. Senator Roberti.

23 BOARD MEMBER ROBERTI: To our staff that means
24 you've done a good job --

25 MS. WOHL: Good.

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1 BOARD MEMBER ROBERTI: -- because you've caused
2 a lot of questions to germinate.

3 MS. WOHL: Great.

4 CHAIR MOULTON-PATTERSON: Thank you very much.
5 We appreciate it.

6 BOARD MEMBER JONES: As far as -- if there's no
7 real estate loans in the hopper today, which you say
8 there aren't, how do the Board Members feel about having
9 a moratorium at least on those until we have this
10 discussion in September?

11 CHAIR MOULTON-PATTERSON: I see nodding heads.

12 BOARD MEMBER ROBERTI: They can't put an
13 application in or --

14 BOARD MEMBER JONES: They can put an application
15 in but just tell them that the rate may be changed from
16 5.3 so at least the person that goes through the
17 application fee and all that stuff at least knows that --
18 because we don't lock the rate until the Loan Committee
19 and this Board agrees to the loan, but if it's a
20 presumption that it's going to be at 5.3 --

21 BOARD MEMBER ROBERTI: Until after the September
22 meeting.

23 BOARD MEMBER JONES: Until after the September
24 meeting just so that nobody comes in at 5.3 and demands
25 it because we took an action in September to raise it.

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1 At least there's a disclosure.

2 MS. WOHL: Sure. We could send them a letter
3 upon receipt of an application that had a real estate
4 component to it that just said this is going to
5 potentially change.

6 MR. LA TANNER: As a matter of policy, loan
7 staff does not commit the interest rate until the Board
8 meeting. All applicants are aware that it's not fixed.
9 For example, if the Controller's office announced a new
10 SMIF rate today, then those loans would have gotten the
11 new rate today.

12 BOARD MEMBER JONES: But SMIF goes up fractions
13 of percentage points. We're talking about percentage
14 points. It's pretty substantially different.

15 Just one quick question, Madam Chair, before we
16 leave. The JTR, the loaning money to local governments,
17 that's in our existing policy. These strike-outs that
18 you've proposed in regs would be additions. So if we do
19 nothing right now, JTR stays in, local government stays
20 in --

21 MS. WOHL: The points.

22 BOARD MEMBER JONES: The interest rate stays the
23 same, the points stay at a half, everything stays the
24 same.

25 MS. WOHL: Yes.

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1 BOARD MEMBER JONES: Cool.

2 MS. WOHL: Can I ask some clarification? Is
3 there any issue that was not discussed in this item that
4 you would want us to bring back in September to know --
5 we can reiterate these charts and show you sort of where
6 we've gotten to with the new loans. Is there anything
7 that you thought wasn't covered that should be?

8 CHAIR MOULTON-PATTERSON: Mr. Paparian.

9 BOARD MEMBER PAPARIAN: I would like to explore
10 a little bit more what are some of the options for
11 leveraging the money. You mentioned PERS and some of the
12 other entities that you're looking at partnering with, a
13 little more exploration of that of what we might do even
14 as Board Members to help assist that process.

15 CHAIR MOULTON-PATTERSON: Thank you.

16 BOARD MEMBER MEDINA: I would also --

17 CHAIR MOULTON-PATTERSON: Mr. Medina.

18 BOARD MEMBER MEDINA: I would also like to see
19 some examples of local government, if they have made use
20 of this particular fund.

21 MR. CHANDLER: Patty, I heard Mr. Jones ask
22 earlier that he would like to know what's going on with
23 CALCAP, did any of these loans that we have been directed
24 there get funded through that program. They don't come
25 before this Board. We need an update on where we are

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1 with CALCAP.

2 CHAIR MOULTON-PATTERSON: Mr. La Tanner, did
3 you have a question?

4 MR. LA TANNER: I can give you a quick update on
5 CALCAP. The program finally got up and running about a
6 month ago, and today no loans have been made through the
7 CALCAP program using our funds.

8 CHAIR MOULTON-PATTERSON: Thank you. As the
9 audience and staff can see, we really are interested in
10 this and supportive of this program and we will have more
11 of a discussion in September.

12 Item 16 was on consent, approved on consent.
13 Items 17 and 18 were pulled. That brings us to Item 19,
14 approval of --

15 BOARD MEMBER JONES: Madam Chair.

16 CHAIR MOULTON-PATTERSON: -- approval of 98-99
17 RPPC all-container and PET recycling rates.

18 BOARD MEMBER JONES: As they're walking up, I
19 just want to thank the loan staff for working with Calvin
20 and my office to get this information, and when it comes
21 back it can be how much is funding and how much is
22 improved so that we -- we're talking apples and apples.
23 Thanks.

24 CHAIR MOULTON-PATTERSON: Thanks, Mr. Jones.

25 BOARD MEMBER JONES: Thanks, Madam Chair.

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1 CHAIR MOULTON-PATTERSON: Okay. Ms. Wohl.

2 MS. WOHL: Madam Chair and Board Members, the
3 next two items, 19 and 20, involve the Rigid Plastic
4 Packaging Container Program.

5 Item 19 asks to you consider adoption of
6 recycling rates for Rigid Plastic Packaging Containers
7 for 1998 and 1999. Each year by law, the Board must
8 publish recycling rates for Rigid Plastic Packaging
9 Containers. If the overall or all-container recycling
10 rate is 25 percent or more, regulated companies are
11 considered to be in compliance with California's rigid
12 plastics law. If the all-container rate is less than 25

13 percent, the Board may require regulated companies to
14 certify that they complied with the law in one of the
15 other ways specified in statute; for example, by using
16 recycled plastic in their containers or by using
17 refillable containers.

18 Item 20 presents options and staff's
19 recommendation for adopting a consolidated compliance
20 certification for 1997, '98 and '99. As I mentioned, the
21 Board may initiate compliance certifications when the
22 all-container recycling rate is less than 25 percent,
23 which is the case for '97, '98 and '99.

24 The Board began calculating recycling rates in
25 1995 and has calculated rates each year since. The 1995

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1 rate was above 25 percent. However, the rest of the
2 rates have been below 25 percent and the trend has been
3 steadily downward.

4 The Board conducted its first compliance
5 certification for 1996. As a result, the Board signed
6 compliance agreements with seven companies and fined an
7 eighth.

8 The 1997 all-container rate was also less than
9 25 percent, and the Board directed staff to prepare
10 compliance certification for that year. At that time we
11 were also preparing to calculate the '98 and '99
12 recycling rates. The Board directed us to refrain from
13 mailing out the 1997 certification forms until you have
14 had an opportunity to review those rates.

15 If you adopt the recommended rates for 1998 and
16 '99, we are prepared to implement a combined
17 certification for '97, '98 and '99. This consolidation
18 of certifications would help to bring the rate
19 calculation and compliance certification process current.

20 I would now like to turn it over to John Nuffer
21 who will begin staff's presentation of Item 19.

22 CHAIR MOULTON-PATTERSON: Thank you.

23 Mr. Nuffer.

24 MR. NUFFER: Thank you, Patty. Madam Chair,
25 Board Members, John Nuffer.

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1 Before I turn the presentation over to Sue and
2 Jerry, who will give you the actual rate calculations, I
3 wanted to say a little bit about the quality of the data
4 and the accuracy of the rates. This is the first year
5 that staff, board staff have conducted the recycling
6 surveys that we need to do every year. For '96 and for
7 '97, the Department of Conservation calculated --
8 conducted those recycling surveys for us. They're so
9 busy now with the expanded Bottle Bill that we had to do
10 those surveys ourselves.

11 We surveyed processors and reclaimers. The
12 processors sort and bail plastic and the reclaimers clean
13 and flake it. We called all of those processors and
14 reclaimers. You should know they're not required to give
15 us any information, and usually the information we're
16 asking for is very sensitive proprietary information
17 about who they buy from and sell to and how much they buy
18 and sell. So it's very sensitive data. They're not
19 required to give it to us. I think staff did a
20 remarkable job in gathering information.

21 The response rate from the processors was 99
22 percent. All but one of 232 processors gave us
23 information. For the reclaimers, it was a 95 percent
24 response rate. So we feel like staff did a very thorough
25 and professional job and the rates reflect that work and

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1 we believe the rates are as accurate as they can be.

2 With that, I'll turn it over to Sue for the bulk
3 of the presentation.

4 CHAIR MOULTON-PATTERSON: Thank you.

5 MS. INGLE: Thank you.

6 We are here today requesting the Board consider

7 for adoption the 1999 and 1998 RPPC recycling rates.
8 Normally staff calculate one recycling rate each year.
9 However, to become more current we are presenting both
10 the 1999 and the 1998 plastic recycling rates.

11 We will be presenting the overall recycling rate
12 for all rigid plastic containers, this is called the
13 all-container rate, and then the PET rate for just rigid
14 PET containers.

15 As you may recall, an RPPC is generally a
16 container that is all of the following: Is made entirely
17 of plastic except for the caps, lids and labels can be
18 made of other materials; it's capable of holding between
19 eight ounces and five gallons; and it's capable of
20 multiple reclosures.

21 We brought with us some examples of RPPC
22 containers. The overall recycling rate accounts for a
23 variety of containers holding products such as laundry
24 detergents, motor oils, food, cosmetics and soft drinks.
25 The polyethylene terephthalate, or PET, rate includes

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1 containers such as soda bottles, water and food. Food
2 and cosmetics are included in the recycling rate
3 calculations, but they are currently exempt from
4 compliance with the RPPC law.

5 The Board is required by statute to annually
6 calculate two recycling rates, the all-container rate and
7 the PET rate. The first rates were calculated in 1995
8 and the Board adopted them in January of 1997. The
9 following year the '96 rates were adopted. The '97 rates
10 were adopted in July of 1999. I will discuss the PET
11 rate later in this presentation.

12 We are here today recommending that the Board
13 adopt the 1999 and 1998 all-container and PET recycling
14 rates. The best estimate for the 1999 all-container rate
15 was calculated at 17.9 percent and the '98 rate at 19.0.
16 The PET rate for 1999 was calculated at 24.8 percent and
17 the '98 rate at 28.5.

18 The graph -- this graph may explain why
19 recycling has increased but the recycling rates are
20 declining. California virgin resin sales for

21 bottle-grade plastics are growing at a faster pace than
22 the amount being returned for recycling. You may have
23 noticed the increase in plastic containers containing
24 beverage, food and household products that were once sold
25 in glass and aluminum packaging.

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1 Now I'd like to discuss the rate calculation
2 process. This basic equation used to calculate the RPPC
3 recycling rate is the same equation used every year. The
4 recycling rate is the tons of RPPCs recycled in
5 California divided by the tons of RPPCs generated in
6 California. Generation is achieved by adding tons
7 disposed with tons of RPPCs recycled.

8 Since the Board's waste characterization survey
9 was conducted in 1999, this made calculating the 1999
10 rate much easier than the '98 rate. The waste
11 characterization survey is very expensive and not
12 conducted every year. Calculating the recycling rate for
13 1998 was -- required extrapolating data from the 1999
14 waste survey to represent the 1998 generation figures.

15 The methodology for calculating the recycling
16 rates was approved by the Board in April of 1998.
17 Cascadia Consulting Group contracted with the Board to
18 assist with calculating the '98 and '99 generation and
19 disposal numbers. Board staff in Waste Prevention and
20 Market Development conducted the two recycling surveys.
21 Board staff, in consultation with the interested parties,
22 together we reviewed and refined the survey process and
23 calculation.

24 Finally, the all-container recycling rate for
25 1999 is 17.9 with a range of 17.1 to 18.8 percent. The

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1 1998 rate is 19.0 with a range of 18.1 to 20.0. The
2 rates must be 25 percent or greater in order for product
3 manufacturers to use this rate for compliance for 1998 or
4 1999.

5 Now we'd like to present the PET rates. The
6 statute Public Resources Code 42310(c) requires or allows
7 companies selling products in PET containers to be in
8 compliance if the annual overall PET recycling rate is 55
9 percent or greater. If the Board adopts the calculated
10 rate of 24.8 percent in 1999 and 28.5 percent in 1998,
11 this compliance option will not be available to product
12 manufacturers for either '98 or '99.

13 When comparing a history of the PET container
14 recycling rates, the graph also shows a downward trend
15 from '95 to 1999. Although the recycled PET bottles have
16 increased from 1995 to 1999 by 16 percent, the sales of
17 PET bottles have increased by 49 percent. Once again,
18 virgin resin sales are growing faster than recycling.

19 Staff recommend the Board adopt Resolution
20 2000-328 and approve the all-container rates and PET
21 rates for 1999 and 19998 as presented.

22 This concludes our presentation.

23 CHAIR MOULTON-PATTERSON: Thank you, and I want
24 to thank staff for all your work on this.

25 Questions?

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1 BOARD MEMBER JONES: Or speakers?

2 CHAIR MOULTON-PATTERSON: Not on 19.

3 BOARD MEMBER PAPARIAN: Can I ask a couple
4 questions?

5 CHAIR MOULTON-PATTERSON: Mr. Paparian.

6 BOARD MEMBER PAPARIAN: The trend is not a happy

7 one. I understand the great increase in the volume of
8 containers accounting for part of this, but also people
9 obviously are not recycling at the same rate. They're
10 recycling at a lesser rate every year these containers.

11 Do we have any indication or information why
12 that is? Have we done any surveys or have we got any
13 anecdotal or empirical information about why this is
14 happening?

15 CHAIR MOULTON-PATTERSON: Mr. Nuffer.

16 MR. NUFFER: Thank you. Actually, if I
17 understand your question correctly -- maybe I don't --
18 the recycling rate is going up. So there is more
19 recycling of plastic but the use of plastic in new
20 packaging is going up at a much greater rate.

21 BOARD MEMBER PAPARIAN: Right. So the
22 percentage that people are recycling is less every year.
23 I understand that. So why is that happening? Why --

24 MR. NUFFER: I think one reason may be that
25 there are lots of different kinds of plastic. There are

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1 seven or eight different kinds of resins that are
2 typical. It's difficult for a homeowner to figure out
3 what resin type is which and which resin type is
4 recyclable and which isn't. So sometimes they only --
5 they can only get rid of soda bottles. They only think
6 that soda bottles are recyclable or their detergent
7 bottles are recyclable, but maybe other resin types are
8 also recyclable. It varies from jurisdiction to
9 jurisdiction and collector to collector.

10 BOARD MEMBER PAPARIAN: When we look at the
11 local government programs -- I don't know if we have any
12 anywhere else in this agenda, but I've looked at them in

13 other agendas -- one of the little things in the
14 checklist is whether they have a public education
15 program.

16 How do you feel about the public education
17 programs that are there? Should we be doing more and
18 encouraging local governments to let people know about
19 what's recyclable?

20 MR. NUFFER: We haven't done a survey of those
21 kinds of public education programs, but I think it would
22 help. I think this subject is so complicated that it
23 would -- education would help.

24 BOARD MEMBER PAPARIAN: I tend to -- just off
25 the top of my head, I tend to agree it's kind of

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1 confusing for the average homeowner what it is they ought
2 to put out at the curb and what they shouldn't put out at
3 the curb. I don't have any empirical information about
4 that, it's just sort of a gut feeling.

5 MR. CHANDLER: Mr. Paparian, let me also say
6 that I can certainly attest to some of the information I
7 learned in my years over at Conservation that the
8 consumer certainly gets reinforced every time he goes to
9 the check-out stand as to what he gets charged for
10 through the California redemption value, and if there's
11 any overarching perhaps reinforcement, it is that a
12 certain percentage of these containers here carry the
13 California redemption value. You can see the Calistoga
14 bottle, which of course would, but perhaps many of the
15 others don't, which I think gets to your point.

16 You mentioned earlier the \$10 million marketing
17 campaign that will be soon launched. That will again
18 reinforce to the public the importance of recycling
19 California redemption value, but to my knowledge at this
20 point will say nothing about the detergent bottles.

21 BOARD MEMBER PAPARIAN: I'm concerned about that.

22 MR. CHANDLER: Your point is well taken and I
23 think it reinforces the public's lack of understanding as
24 to what is truly recyclable because of the singular
25 emphasis on beverage containers. For better or worse,

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1 this is clearly out there and carries with it the value
2 in the pocketbook.

3 BOARD MEMBER PAPARIAN: Right. The information
4 the public may be getting, it may be that the soda bottle
5 is recyclable and the detergent bottle is not.

6 MR. CHANDLER: Certainly they'll hear about the
7 soda bottle and they may not hear anything about the
8 detergent bottle is my point.

9 CHAIR MOULTON-PATTERSON: Thank you for bringing
10 that up.

11 Mr. Jones.

12 BOARD MEMBER JONES: There is a campaign right
13 now that APC, the Waste Board, the zoos, the Albertsons I
14 think are doing where they're notifying people through
15 shelf talkers, things like that, of which of the 1s and
16 2s are recyclable.

17 One of the things that when they first came to
18 us I cautioned them about was that back many, many moons
19 ago they did a huge advertising campaign and told the
20 world they could recycle 1 through 7. So when they kept
21 coming into our facilities and we had no markets for 3
22 through 7, we had to let those people take that material
23 back home and it did an awful lot to damage what could
24 have been a -- we got them at the wrong time. It was at
25 the beginning of this and people got disenchanted, and I

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1 think that everybody has been working pretty hard to make
2 sure they understand 1s and 2s.

3 There are markets for 1s and 2s. There aren't
4 markets for a lot of the other stuff, or if there are
5 markets, they need to be subsidized so heavily to get a
6 trailer load to the location that it becomes pretty cost
7 prohibitive, but it is disconcerting to see that much
8 more plastic as virgin material goes into this.

9 I think it's all that more evident that we've
10 got to really think about the next item, Number 20, as to
11 what our compliance measures are going to be and who
12 we're going to look at because there are lots of folks
13 out there that could be using recycled-content material
14 as is evidenced by the five or six that are on compliance
15 right now that are re-tooling to get more content into
16 their material and that's what we're trying to do
17 hopefully as an outcome.

18 CHAIR MOULTON-PATTERSON: Okay. I was just
19 handed a speaker slip on this item.

20 Tim Shestek, American Plastics Council.

21 BOARD MEMBER ROBERTI: Madam Chair.

22 CHAIR MOULTON-PATTERSON: Senator Roberti.

23 BOARD MEMBER ROBERTI: Yes. I would just like
24 to read this for the record because in the past I have
25 recused myself from decisions on the RPPC rules. I'll

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1 just read the relevant points of the legal opinion from
2 Mr. Block.

3 In previous memorandum discussions, the legal
4 office has outlined the potential conflict of interests
5 that you might have had in participating in and voting on
6 decisions relating to the Board's RPPC program. The
7 potential conflicts stem from your wife's ownership of
8 stock in three companies that have been sent
9 certification forms by the Board for the 1996 compliance
10 with the RPPC law. These companies were Avon, Gillette
11 and General Electric.

12 An earlier memorandum indicated that it had been
13 determined that Avon and Gillette were not subject to the
14 RPPC law, and that while General Electric was, the
15 potential financial impact on it was below the threshold
16 that would require you to abstain from making decision
17 regarding the program.

18 As the Board moved on to looking at the 1997
19 certification year and beyond, a similar issue arose with
20 respect to two other stocks owned by your wife,
21 Exxon-Mobil and Colgate-Palmolive. RPPC staff has
22 determined that the financial impact on Exxon-Mobil and
23 Colgate-Palmolive would be below the threshold that would
24 require you to abstain from making decisions regarding
25 this program. They've also determined that

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1 Colgate-Palmolive would not be subject to the 1997
2 certification process because it does not fit within the
3 targeted groups.

4 In the light of this opinion, I will participate
5 in the decision.

6 CHAIR MOULTON-PATTERSON: Thank you.

7 Mr. Shestek.

8 MR. SHESTEK: Thank you, Madam Chair and
9 Members. Tim Shestek with the American Plastics Council.

10 I just want to make a couple points regarding
11 this item, first to acknowledge staff's work on this
12 effort. It's a massive undertaking and over the last
13 couple of years having had the opportunity to work
14 closely with them I've been very impressed by the
15 professionalism and the effort that's been undertaken.

16 To your point, Mr. Paparian, the current
17 infrastructure that the majority of Californians have
18 access to in terms of plastics recycling is the
19 infrastructure can accept much more material than it's
20 currently being fed. We've done some studies,
21 particularly here in northern California in the City of
22 Napa, where their infrastructure, their plastics
23 recycling curbside program, about 35 percent of what they
24 were asking consumers to put in the recycling bin wound
25 up in the waste basket because they were confused. They

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1 weren't sure if their pigmented high density polyethylene
2 detergent bottle belonged in the recycling bin or not.

3 We think we have a program that we've been
4 testing in some other parts of the country to make the
5 curbside programs more simpler for consumers, not
6 necessarily asking for just number 1s or number 2s but
7 encouraging local governments to accept all plastic
8 bottles in the curbside programs. The reality is that
9 about 95 percent of plastic bottle resin is number 1s and
10 2s. Some local governments would be concerned that their
11 stream would be contaminated with other plastics.

12 We believe that the reality is that those
13 containers are already ending up in curbside programs.
14 An all-bottle program would result in a tremendous amount
15 of more material being captured versus just a number 1
16 and number 2.

17 And to Mr. Jones's point about the public
18 education campaign, we're very excited about the
19 partnership of the Waste Board and some of our allied
20 trade groups in promoting plastics recycling through a
21 direct advertising campaign at the retail level and radio
22 and television public service announcements. We think
23 that has a tremendous potential for impacting plastics
24 recycling habits and looking forward to continuing to
25 work with the Board on other joint partnership activities

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1 that we can help promote recycling.

2 Thank you.

3 CHAIR MOULTON-PATTERSON: Thank you.

4 BOARD MEMBER PAPARIAN: Can I ask a quick
5 question about that effort? Do you have a way of -- as
6 part of that effort, do you have a way of analyzing the
7 results? Are you looking at the recycling rates in the
8 targeted communities to see if there's any --

9 MR. SHESTEK: When we launched the program back
10 in 1999 just in the Sacramento area, we did a comparison
11 between calendar years, the year prior and the 1990
12 calendar year, in terms of collection what the County was
13 able to collect during those two periods. So we were
14 able to demonstrate a tremendous increase in the targeted
15 bottles that we had in our program and it was close to 28
16 percent increase in collection just in the Sacramento
17 Valley during 1999. We hope to do that again this year
18 with this campaign. It's a much broader geographical
19 area, but we're going to try to do our best in the fall
20 when reporting numbers are in to demonstrate how the
21 program impacted, hopefully positively, in collection
22 rates.

23 BOARD MEMBER PAPARIAN: Thank you.

24 CHAIR MOULTON-PATTERSON: Thank you.

25 BOARD MEMBER JONES: Madam Chair.

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1 CHAIR MOULTON-PATTERSON: Mr. Jones.

2 BOARD MEMBER JONES: I would like to move
3 adoption of Resolution 2000-328, the approval of the
4 1998-1999 Rigid Plastic Container all-container and
5 polyethylene -- PET recycling rates.

6 CHAIR MOULTON-PATTERSON: Thank you, Mr. Jones.
7 Do we have a second?

8 BOARD MEMBER MEDINA: Second.

9 CHAIR MOULTON-PATTERSON: Mr. Medina seconds.
10 Motion by Mr. Jones, seconded by Mr. Medina for
11 approval of Resolution 2000-328.

12 Secretary, please call the roll.

13 BOARD SECRETARY: Eaton.

14 BOARD MEMBER EATON: Aye.

15 BOARD SECRETARY: Jones.

16 BOARD MEMBER JONES: Aye.

17 BOARD SECRETARY: Medina.

18 BOARD MEMBER MEDINA: Aye.

19 BOARD SECRETARY: Paparian.

20 BOARD MEMBER PAPARIAN: Aye.

21 BOARD SECRETARY: Roberti.

22 BOARD MEMBER ROBERTI: Aye.

23 BOARD SECRETARY: Moulton-Patterson.

24 CHAIR MOULTON-PATTERSON: Aye.

25 Number 20.

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1 MS. WOHL: Item 20, consideration of approval of
2 a consolidated Rigid Plastic Packaging Container
3 compliance certification for the 1997, 1998 and 1999
4 compliance years.

5 Michelle Marlowe will present.

6 MS. MARLOWE: Good afternoon, Board Members and
7 Chairwoman Moulton-Patterson.

8 We were here in January to talk about the
9 1997 -- the proposed 1997 certification process, and for
10 the benefit of the new Members, I'll just speak briefly
11 about that issue. It was agreed upon at the time that we
12 would target four industry sectors based on our '96
13 experience with companies both that were out of
14 compliance and that are in compliance agreements with us.
15 So for the next certification, we'll focus on automotive
16 parts, accessories and lubricants; janitorial supplies;
17 hobbies and crafts; and hardware and tools.

18 It was recommended by the Board that we select
19 750 to 1,000 product manufacturers and we have shot for
20 that 1,000 mark. At the January meeting,
21 Ms. Moulton-Patterson suggested that we just hold off a
22 little bit with the '97 certification to see what the '98
23 and '99 rates looked like, and if it looked like we could
24 combine the certification process, we would certainly
25 consider doing that.

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1 So today I'm here to talk about a couple of
2 options for consolidating this certification of 1,000
3 product manufacturers doing business in California with
4 products that are not inherently exempt and packaged in
5 rigid plastics.

6 First we'd like to suggest that the Board
7 consider combining the three years and require
8 certification for each year from the product manufacturer
9 but only require container compliance data from the 1999
10 compliance year. And the reason for that is that we
11 think it would save a lot of time on the part of product
12 manufacturers going after their maybe numerous container
13 manufacturers to get specific data and have them fill out
14 forms, as well as submitting that data to staff and
15 having us go through it all. We would recommend that
16 they certify that they either were or were not in
17 compliance for the '97 and '98 year and, in fact, if they
18 were out of compliance, we could then go back and get
19 more data to determine the level of out of compliance
20 maybe that the companies were. But we're I think all in
21 agreement that we want to focus on what can be done for
22 the future, not what didn't happen in the past.

23 This option would still allow the Board to levy
24 fines for those companies that were found to be out of
25 compliance. We just think it would simplify the process

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1 a little bit and the paperwork.

2 The second recommendation or second option would
3 be to combine those certifications and go ahead and
4 require the container data for all three years as well,
5 just initially. And then a third option would be
6 anything that you would like to recommend to us today.

7 Any questions?

8 CHAIR MOULTON-PATTERSON: Thank you,
9 Ms. Marlowe. Thank you for coming back with this.

10 We do have one -- Mr. Eaton, did you want to
11 speak before the speaker?

12 BOARD MEMBER EATON: I just wanted to kind of
13 get the process down. How would we determine -- in other
14 words, in your example if they were out of compliance in
15 '97 and '98 but they certified they were in compliance in
16 '99, do you have any ability to check on whether their
17 certification in '97 and '98 was correct? You're not
18 going to have data.

19 MS. MARLOWE: Well, the -- it would be --

20 BOARD MEMBER EATON: Or are you planning on
21 doing audits? That's what I'm trying to figure out.

22 MS. MARLOWE: We could do audits if we felt the
23 need to, but the product manufacturers are asked to
24 certify under penalty of perjury that the information
25 they're submitting is true.

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1 BOARD MEMBER EATON: Right.

2 MS. MARLOWE: So if they say they were out of
3 compliance for '97 or '98, we would hold them to that.

4 BOARD MEMBER EATON: What if they said they were
5 in compliance?

6 BOARD MEMBER JONES: In '97 and '98 and not in
7 '99. I think that's what you're saying.

8 BOARD MEMBER EATON: That's one. Or if they
9 said they were in compliance in '97, '98 and '99 and they
10 weren't. Without an audit process in place, which we've
11 done in the past, how are we going to determine whether
12 that's true and accurate? I'm not trying to ding them,
13 but I'm just trying to figure out that we have a
14 statutory obligation if they're out. I want to make sure
15 at least -- I like the consolidation aspects and all

16 that, I just want to make sure that our statutory
17 obligation doesn't subject us to not only public
18 criticism but also in terms of the statutory obligations
19 we have to assure that it's accurate.

20 CHAIR MOULTON-PATTERSON: Thank you, Mr. Eaton.

21 MR. NUFFER: We would be relying on their
22 self-certification with our recommendation, but we would
23 be happy to request information for all three years if
24 that's the Board's pleasure.

25 BOARD MEMBER EATON: Unless you think there's an

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1 audit process that prevents it. I'm just trying to find
2 a process by which we can spot check. I'm not trying to
3 make it burdensome, but we need some checks and balances
4 to make sure that at least if we find that there were a
5 number of self-certifications that were not in fact the
6 case, then you know --

7 MR. NUFFER: We could always include a provision
8 that if we felt uncomfortable about a certification or if
9 we knew about a company that made us think what they were
10 telling us wasn't quite accurate, we could always request
11 information. This doesn't preclude us from or wouldn't
12 preclude us from asking for additional information.

13 BOARD MEMBER EATON: It doesn't get at the
14 process. That's just basically subjective, whether or
15 not you've got an inkling or you've got a sniffer that
16 you think they're doing something. Is there a process --
17 can we work a process in by which there is an audit
18 component to it where you spot check audits just to see?
19 If you audit five and find out four didn't really say
20 what they were supposed to say, yes, they're subjected to
21 penalty of perjury, but it also is a situation that maybe
22 we need to come back and look at all of them.

23 MS. WOHL: At least from what I understand of
24 our other certification processes, we have an audit
25 component. So we certainly could do that for this too.

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1 BOARD MEMBER EATON: So what has changed?

2 MS. WOHL: Right. We could do some sort of
3 random sample and just verify those, that we ask for
4 additional data regarding --

5 CHAIR MOULTON-PATTERSON: You know, I really
6 like the consolidation. Thank you. But I do agree with
7 Mr. Eaton that random audits would be in order.

8 BOARD MEMBER EATON: Just -- yeah.

9 MS. WOHL: Sure.

10 CHAIR MOULTON-PATTERSON: Okay. We have a
11 speaker, Mr. Gene Livingston.

12 MR. LIVINGSTON: Madam Chair, Members of the
13 Board, my name is Gene Livingston with Livingston
14 Mattistich and I'm here today on behalf of the Soap and
15 Detergent Association.

16 I have two points I would like to make with
17 respect to Item Number 20 and the combined certification
18 program. Let me just say at the outset that I appreciate
19 the Board's effort and the staff's effort to get current
20 on this recycling rate and the certification program.
21 That's certainly what the statute contemplates.

22 As I look at your regulations, I had to
23 conclude, however, that you cannot combine all three
24 years in a certification and that basically your
25 regulation limits you to seek information for 1999, and

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1 just specifically let me reference those regulatory
2 provisions.

3 In Section 17946, Subdivision B, the subdivision
4 says when must certifications be submitted and it says,
5 "The Board may request a completed certification from a
6 product manufacturer once per calendar year," and then
7 when you look at Section 17946.5, it says that,
8 "Documentation to substantiate a compliance claim must be
9 provided for the preceding calendar year."

10 I think that when you look at the regulatory
11 provisions and think about the statutory structure that
12 was contemplated, all of this makes sense. The
13 legislation contemplated that you would establish a
14 recycling rate on an annual basis, then if it was below
15 25 percent you would send out certifications in that year
16 it would be certifying on an annual basis, and neither
17 the statute nor your regulations really contemplate the
18 situation we have here. So I support your getting
19 current. I think your regulations limit you to looking
20 at 1999, however.

21 The second point that I would like to make with
22 respect to your agenda item, on page 3 at the top with
23 respect to the certification forms it talks about that
24 the forms had been revised to include the number of
25 containers in each product category, line or sub-line

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1 being reported, and then it refers to other modifications
2 designed to make the form simpler.

3 This was an issue that we dealt with with
4 respect to the 1996 certification. We spent a lot of
5 time working with the staff on the certification form and
6 again your regulations in 17946, Subdivision H, talk
7 specifically about product containers and not product
8 lines. In fact, when you look at the final statement of
9 reasons that your staff prepared when the regulations
10 were initially adopted, it talks about the changes that
11 were made in the regulation and the initial draft form of
12 the regulation in going from product line or sub-line to
13 containers because that's what the statute talks about.

14 And so that was the form that we designed for the 1996
15 certification was to be consistent with your regulation.

16 We haven't seen the form for the certification
17 that's now being proposed. And again, on behalf of the
18 Soap and Detergent Association, we would be pleased to
19 work with you to try to make that form as simple and as
20 user-friendly as possible since many of our members will
21 be asked to complete that form.

22 But those are the two points I wanted to share
23 with you this morning or this afternoon. Thank you.

24 CHAIR MOULTON-PATTERSON: Thank you very much.

25 MR. BLOCK: Madam Chair.

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1 CHAIR MOULTON-PATTERSON: Yes, Mr. Block.

2 MR. BLOCK: Deborah Borzelleri from the legal
3 office, for the record I think we would want to respond
4 to the comments.

5 CHAIR MOULTON-PATTERSON: Yes. I would like you
6 to.

7 MS. BORZELLERI: It's been our interpretation
8 of the regulations that since we had not conducted the
9 surveys or the certifications for previous years, that
10 the combining them into the three years for this time
11 would be fine. So it's the legal office's opinion that
12 this would be okay.

13 CHAIR MOULTON-PATTERSON: Thank you.

14 BOARD MEMBER PAPARIAN: May I ask one question
15 about that?

16 CHAIR MOULTON-PATTERSON: Yes. Mr. Paparian.

17 BOARD MEMBER PAPARIAN: I'm not sure who to
18 direct it to, but is there a real-world impact of doing
19 1999 versus -- doing the one year versus the three
20 combined years? Do you understand what I'm asking? I'm
21 asking does it change anything that we wind up doing here
22 by having just '99.

23 MS. BORZELLERI: Actually, I think the issues
24 that we've faced are the ability of the companies to come
25 up with data. So that is the real-world impact as far as

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1 the legal office is concerned. As you notice in the
2 agenda item, we have discussed the perspective of keeping
3 data for two years, which is what the regulations state.
4 We changed the regulations to make it four years. We did
5 that a little bit after the first of the year, so there
6 is a chance there could be some data that has been
7 destroyed, but that's really the only issue that we've
8 realized at this point. The manufacturers may have some
9 issues as well.

10 CHAIR MOULTON-PATTERSON: Mr. Eaton.

11 BOARD MEMBER EATON: Mr. Livingston, is it your
12 contention that we are prohibited from doing '97, '98 if
13 we were to do '99 by virtue of the statute that says
14 we're only allowed one per year?

15 MR. LIVINGSTON: My position --

16 BOARD MEMBER EATON: I'm trying to get some
17 clarification.

18 MR. LIVINGSTON: Right. My position is that
19 your regulations contemplate that you would seek
20 certification for a single calendar year, and I think
21 while you're in a mode here of ensuring compliance on the
22 part of others with the statute and so on, that it was
23 something that was encumbered on me to bring to your
24 attention, the limitation that I see the regulation
25 imposing on you.

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1 With respect to Mr. Paparian's question, I don't
2 know whether it has an impact on the Board or on your
3 implementation of the program. To focus in on 1999
4 certainly brings you current and I think you're now in a
5 position where you have in place a mechanism for
6 calculating the rate and we won't see the two- and
7 three-year delays in the future that we've seen in the
8 past. And so it's think it's a way to start going
9 forward.

10 From the product manufacturers' perspective, I
11 think that three years versus one year is very
12 significant. Even though option one you contemplate
13 requiring only certification, basically the manufacturers
14 have to pull together all of the data in order to make
15 the calculation that they report to you on their
16 certification form. So the work for them is basically
17 the same under option one or option two, and you're
18 talking about doing it for three years.

19 And the two methods that product manufacturers
20 are using to comply, source reduction and post-consumer
21 material require container manufacturer certifications as
22 well. So basically the product manufacturers are going
23 to have to go back to the container manufacturers for
24 each of those three years and get from them records that
25 verify that the containers that they bought from those

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1 container manufacturers complied with the requirements as
2 well.

3 So it's a -- from the product manufacturers'
4 perspective, it is a three-time burden that 1999 alone
5 would impose.

6 CHAIR MOULTON-PATTERSON: Thank you. Any other
7 questions?

8 BOARD MEMBER JONES: I'm a little perplexed. I
9 want to get current, but if we can't get current then
10 maybe it makes more sense to do '97 and then deal with
11 the regs because you're letting -- I see staff going
12 crazy, but --

13 (Laughter)

14 BOARD MEMBER JONES: I think it's important to
15 understand that when we dealt with '96 and we had those
16 six, eight or ten or however many compliance orders,
17 those manufacturers are in the process of making change.
18 They're changing their packaging so that they are in
19 compliance and to leapfrog '97 and '98, do we do it -- is
20 that fair? Is it fair to the intent?

21 I would love to see us leapfrog up, but as
22 Mr. Livingston said, we may not have the statutory
23 ability to do that. The whole idea of this thing is to
24 get into compliance.

25 CHAIR MOULTON-PATTERSON: Well, excuse me just a

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1 moment. This is frustrating for me because my point was
2 that we get current and move forward, and I felt legal
3 staff said we were within our legal rights to do this.
4 I'd like to hear from other Board Members and see how
5 they feel about it.

6 Senator Roberti.

7 BOARD MEMBER ROBERTI: At first I was thinking
8 we ought to leapfrog, but now that I'm thinking about it,
9 I think the statute is hazy. Except for some of our
10 time, we might as well touch every base and free this
11 Board of at least the criticism that we aren't doing our
12 job, even though it would be hard to convince people
13 we're doing our job because it's such a lag in time, this
14 issue, but my own feeling is our statutory obligation
15 probably is that we do every year and that we not
16 leapfrog and I say that's the prudent thing to do. The
17 work's already -- the work's been done. The process is
18 being done.

19 MS. WOHL: Let me just comment. I guess based
20 on our legal opinion was that we really have the legal
21 authority to do the process the way we're recommending.
22 How we've interpreted it, I believe, is that we can't ask
23 for that same certification twice in a year for that
24 individual year. Isn't that sort of some of the
25 discussions we've had. It isn't that we can't ask for

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1 multiple years, '97, '98, '99 but that we can't go back
2 twice and ask for '97 and we can't ask for '98 twice.

3 I think staff's feeling is if you're looking at
4 solving the problem, or like Mr. Jones mentioned is the
5 people that have compliance agreements right now, they
6 are getting their act together and are meeting our
7 demands. Well, if you look at '97 it's what they're
8 producing now anyway that they're fixing. So I think
9 we're trying to say if we start paying attention to what
10 they're doing now and if they're in compliance now and
11 they weren't, then it's no longer an issue because
12 they've gotten to where we want them to be which is they
13 are now doing it the right way.

14 If they're not there, then they're going to get
15 there based on their '99 year anyway. So you're not
16 going to be gaining anything -- that you would gain
17 whether you did it for '97 and then came back because
18 either way they're going to fix the problem once.

19 BOARD MEMBER JONES: The --

20 CHAIR MOULTON-PATTERSON: Mr. Jones.

21 BOARD MEMBER JONES: I hate to -- if they
22 wrote -- I can't believe that stakeholders wanted to
23 include in the law the ability -- if you ask for
24 information, you're asking for the information. Why
25 would we ever go back twice for the same year? That

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1 can't be what the stakeholders were worried about back
2 then. That -- I don't know. That just doesn't make
3 any -- unless I don't understand the process.

4 It would seem to me when you ask for the product
5 lines, you ask for all the product lines; right? So why
6 would we ask twice in the same year? So I think that if
7 the industry said, you know, don't hammer us for all this
8 stuff -- there has to be a reason why these laws are
9 negotiated the way they are. Good, bad or otherwise,
10 people's issues have to be taken into account.

11 If we go to '97, which is what our job is, I
12 don't like the idea of not getting current. Understand
13 what I'm saying. I would love us to be current, but I'm
14 a little worried that by leapfrogging '97 and '98 we are
15 really looking at a whole lot of manufacturers, 2,000 to

16 be exact because you're going to look at a thousand for
17 each year, that we're not going to know if they're in
18 compliance or not. So maybe we'll just -- pardon me?

19 MR. SHESTEK: It's the same thousand each year.

20 BOARD MEMBER JONES: It's a thousand per year.
21 No, I'm saying if we do '97 this year; right? Then we'll
22 do a thousand. We do '98 next year, we're going to do a
23 thousand. It's 2,000. We're going to do a thousand for
24 '99, that's 3,000 as opposed to us trying to combine all
25 three and do 1,000.

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1 MS. WOHL: 1,000 companies.

2 BOARD MEMBER JONES: Total.

3 MS. WOHL: 3,000 certifications.

4 BOARD MEMBER JONES: 3,000 pieces of paper, two

5 that say certify, one that says make sure you have the

6 stuff. But if the argument is we can't do that, then

7 we're going to look at three years of 1,000 things as

8 opposed to one year of 1,000. I don't know.

9 Where's the hardship on that? It seems to me

10 there's going to be a lot more work for the industry over

11 doing it one year at a time than it would be for us to do

12 the three years.

13 CHAIR MOULTON-PATTERSON: Senator Roberti.

14 BOARD MEMBER ROBERTI: Madam Chair, another

15 point against the concept of leapfrogging and in effect

16 doing one year with the data on three years. I'm sorry

17 he's not here. I understand he's ill, Mr. Best. My

18 recollection is Californians Against Waste generally has

19 been somewhat critical of us for not being tough enough

20 on industry and there is an advantage, not the main

21 advantage, but an advantage to having -- what's the word?

22 Certification for the three years, and that is to know

23 how rapidly some companies conform to the dictates of the

24 law.

25 I think that's something this Board should know,

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1 whether -- if you know -- if every so often a company
2 gets its act together and every three years begins to
3 comply, that's one thing. If another company is johnny
4 on the spot and they comply when they have to and are
5 quick, that's another point. So it's not the main point,
6 but it's certainly something that should come within our
7 purview and our understanding when we make these
8 decisions.

9 So with that in mind, I just think once again we
10 touch every base and do it according to Hoyle, even if
11 there may be an interpretation, which I think is disputed
12 that we may not have to.

13 CHAIR MOULTON-PATTERSON: Mr. Block.

14 MR. BLOCK: Yes, Madam Chair. Just a little
15 more clarification on this issue since we've been, again,
16 batting around the legal issue.

17 A couple different things. One of the things to
18 keep in mind is the alternative interpretation that's
19 been raised is related to our regulations, not the
20 statute. So to the extent there is some larger concern
21 or bigger dispute, we could always look at potentially
22 changing the language, clarifying that language.

23 Speaking of that language, I think that it's
24 certainly our position that the language that is being
25 talked about about seeking certifications every year

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1 really is in that regulation in a descriptive way rather
2 than a regulatory way, if you will. Sort of as the
3 process was being discussed, certainly the normal way
4 that the pattern would work is every year there would be
5 a rate set and then the certifications, but there's
6 nothing in that language that prevents asking for that
7 certification every year.

8 Certainly the certification that was done from
9 '96 was done two years after the fact. To interpret the
10 regulation now to say that we cannot go back to '97 would
11 be contrary to the Board's previous action in dealing
12 with '96.

13 It's hard to imagine how combining the three
14 would suddenly change the way that interpretation we
15 suddenly couldn't go back to '97. To mechanically take
16 that through theoretically means it would be okay for us
17 to do '97 now, wait six months and do '98, wait another
18 year and do '99 rather than combining. That doesn't seem
19 to make a lot of sense in terms of the way we're looking
20 at the regulation.

21 So I wanted to make sure to get those points in.
22 As I'm told, obviously if there is continued concern
23 about that, we can go in and look at modifying the
24 language to clarify it.

25 CHAIR MOULTON-PATTERSON: Any other Board

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1 comments? Well -- Mr. Eaton.

2 BOARD MEMBER EATON: I'm just trying to think of
3 a way to split the bath water, but obviously the only way
4 to get out of the box is really to move forward with the
5 '97 certification and then direct legal staff or the
6 legal office to come back, I think it's got to be next
7 month at least, with an opinion based upon the fact that
8 can we issue multiple -- if we can't combine them, does
9 that -- that may be valid in that sense, but we can
10 perhaps issue multiple certifications within one year
11 since they deal with different years.

12 In other words, that would go against what
13 Mr. Mansfield and the industry wants, and I think
14 Mr. Jones was articulate in the fact that it really adds
15 more burden to them to have to do it that way, but I
16 think that would be the only way. So what we do is we
17 move forward at least with '97 so we don't lose it and
18 then they get back to us with either a regulatory change
19 that has to take place or a statutory opinion or Attorney
20 General's opinion or whatever legislative research that
21 says we can't issue '98 and '99 and then we'll at least
22 have the option to do what you want to do which is
23 combine both.

24 CHAIR MOULTON-PATTERSON: Did you want to make a
25 motion to that effect?

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1 BOARD MEMBER EATON: I think that's one of the
2 ways out. I would just like to hear if others think that
3 that's an avenue.

4 CHAIR MOULTON-PATTERSON: Mr. Jones.

5 BOARD MEMBER JONES: I want to ask a question.
6 Is the way that Mr. Livingston brought that up is that
7 the Board can only ask for certification from a company
8 one time a year or ask for certifications once a year?
9 If it's a company, I mean then I think what we need to
10 do -- is it a company? You started this thing.

11 (Laughter)

12 MR. LIVINGSTON: Well, I haven't had a chance to
13 be at the Board for some time and I kind of missed you.

14 BOARD MEMBER JONES: Is what you're --

15 BOARD MEMBER EATON: I think you had other
16 things on your plate like insurance maybe.

17 (Laughter)

18 MR. LIVINGSTON: The regulation, as Mr. Jones
19 said, that the Board may request a completed
20 certification from a product manufacturer once per
21 calendar year. On the 17946.5, it says documentation to
22 substantiate a compliance claim must be provided for the
23 preceding calendar year, so that -- since you would be
24 asking for that in the year 2000, the preceding calendar
25 year would be 1999. That language doesn't sound to me to

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1 be descriptive. It sounds pretty mandatory.

2 Documentation to substantiate a compliance claim must be
3 provided for the preceding calendar year and it's
4 singular, preceding calendar year, not years.

5 BOARD MEMBER JONES: And it says company.
6 Company.

7 MR. LIVINGSTON: The product --

8 BOARD MEMBER JONES: Product manufacturer.

9 MR. LIVINGSTON: The certification on compliance
10 refers to a product manufacturer.

11 BOARD MEMBER JONES: All right. Is there a way,
12 while we're dealing with this, since we're able to figure
13 out this as we're going along because I'm assuming we're
14 still in the scope of what this resolution is going to
15 look like, of increasing from 1,000 -- that we do 500
16 certifications for a random number of companies for 1997,
17 that we pick another 500 to 750 companies for 1998, and

18 another 500 for 1999 where -- whatever number the Board
19 Members want to do.

20 You would end up sending out to one company one
21 certification. They would just be different years and it
22 would get you at the end of the process, caught up to
23 where we are. I'm sure that that's a lot of work, an
24 incredible amount of work, but is that a way -- I throw
25 this out as an option to look at not leapfrogging anybody

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1 but still coming up to 1999 data. We just go after 500
2 each year as opposed to something different. I don't
3 know. I just throw it out as an option.

4 CHAIR MOULTON-PATTERSON: Just a suggestion.
5 Does our legal staff need a little time because we're way
6 over lunch time for our court reporter to have a break.
7 Would additional time -- we can take our lunch break now
8 and come back and finish this discussion. Would that
9 help, Mr. Block?

10 MR. BLOCK: I think -- in the legal office I
11 think we're fine. We're comfortable with our
12 interpretation. In terms of the option that Mr. Jones
13 has just provided, legally that's not a problem. There's
14 a policy choice the Board needs to make as to whether you
15 want to do that. You can take a break. I don't know --
16 unless there's more questions that you want us to go back
17 and research.

18 CHAIR MOULTON-PATTERSON: So you're fine.
19 Mr. Jones, would you like to --

20 BOARD MEMBER JONES: I think I'd like to think
21 about it. Let's have this after lunch and that way we
22 can try to put things into some kind of perspective.

23 CHAIR MOULTON-PATTERSON: Thank you very much.
24 We will continue this item after lunch and we'll also
25 take up 21, 23 and 25, and we have a closed session.

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1 Let's return at 2:30.

2 Thank you.

3 (Lunch recess taken)

4 CHAIR MOULTON-PATTERSON: I'd like to call the

5 meeting back to order, please.

6 Ex partes. Mr. Eaton.

7 BOARD MEMBER EATON: Lance Hasting at the end of

8 the discussion just came up and had a brief conversation

9 regarding RPPC solutions and proposals.

10 CHAIR MOULTON-PATTERSON: Okay.

11 Mr. Jones.

12 BOARD MEMBER JONES: Gene Livingston, Randy

13 Pollak (phonetic) and Lance Hastings on this issue, on

14 Item 21.

15 CHAIR MOULTON-PATTERSON: Mr. Medina.

16 BOARD MEMBER MEDINA: None to report.

17 CHAIR MOULTON-PATTERSON: Thank you.

18 Mr. Paparian.

19 BOARD MEMBER PAPARIAN: Gene Livingston, more

20 meet-and-greet, and Mark Murray regarding RPPC.

21 CHAIR MOULTON-PATTERSON: Thank you. And I said

22 hello to Lou Calcagno who is the Chair of the Monterey

23 Board of Supervisors, who I had the honor of serving for

24 four years on the California Coastal Commission. Nice to

25 see you.

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1 We're continuing on Item 20, and let's see. I
2 think we're waiting for one of our -- there we go. I
3 think we'll start out -- our attorneys wanted to make
4 that clarification. Are you ready, Ms. Borzelleri? I'm
5 sorry to rush you.

6 MS. BORZELLERI: We had we think a
7 misunderstanding about a piece that Mr. Hastings had
8 talked about and I just want to make a quick
9 clarification.

10 CHAIR MOULTON-PATTERSON: Okay. Thank you.

11 MS. BORZELLERI: Elliot is going to put
12 something up and I'll pass these out as well.

13 MR. BLOCK: I'm going to zoom into parts of this
14 since it's small.

15 MS. BORZELLERI: Mr. Livingston, I'm sorry. Not
16 Mr. Hastings.

17 CHAIR MOULTON-PATTERSON: Thank you.

18 MS. BORZELLERI: The options that were provided
19 by staff for the -- excuse me. The first option that
20 staff was talking about doing is having -- for '97 and
21 '98, having the product manufacturers submit a
22 certification under penalty of perjury that they had
23 complied or not complied with the law and for '99 doing a
24 full certification which includes some data that we
25 usually ask for on the certification. That's what we've

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1 got represented under number one and number two.

2 Mr. Livingston talked about a section of the
3 regulation, Number 17946.5, called it documentation
4 requirements, and it's actually in our regulations, but
5 what that particular section contemplates is a third
6 stage of the certification process. I don't think staff
7 had really contemplated as getting additional data from
8 manufacturers for '97 and '98. Staff had not
9 contemplated going that far. That was the section
10 Mr. Livingston was talking about.

11 Just to refresh your memory, I'll read it for
12 you. I'm sure all these details stay right in your head
13 with all the other items that you have. This section --
14 well, okay. It says here, "The Board may require product
15 manufacturers and container manufacturers to submit to
16 the Board supporting documentation that substantiates
17 their compliance claims following the receipt of the
18 certification."

19 What we really are talking about in this section
20 is additional documentation, not the information that
21 Mr. Eaton was talking about whereas if we got into '97
22 and '98 and didn't necessarily like the certification
23 that was provided or maybe something they provided in
24 1999 that made us think they weren't really in compliance
25 for the other years and we wanted to question it, what we

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1 would be going back and asking for is the data that we
2 would ordinarily request on the certification, not this
3 additional data. Okay? So I don't know if that helps or
4 not, but it's a small point to clarify.

5 CHAIR MOULTON-PATTERSON: So it's your
6 understanding that Mr. Livingston was, I guess I can ask
7 him, was worried about additional documentation.

8 MS. BORZELLERI: The section that he was
9 pointing to -- and what this says is except as otherwise
10 stated, documentation to substantiate a compliance claim
11 must be provided for the preceding calendar year. So
12 that section that he was relying on would not contemplate
13 the option that we were talking about with staff, option
14 number one. That would be modified to deal with the
15 questionable '97 or '98 data.

16 CHAIR MOULTON-PATTERSON: Thank you. Did --
17 before we go to the -- we have two more speakers. Before
18 we go to the speakers, did anyone have any questions of
19 our attorney?

20 Lance Hastings, Grocery Manufacturers of
21 America.

22 MR. HASTINGS: Good afternoon, Madam Chair and
23 Members. We, too, had an opportunity during the lunch
24 hour to visit and we've given much more consideration to
25 the options that were debated and discussed earlier.

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1 I would like to make the observation that the
2 '96 compliance process that was entertained and completed
3 just last year found very broad and successful compliance
4 among all that were sent the certification forms. Some
5 were exempted because of the products that they contained
6 in their RPPCs. So the universe was a little bit
7 smaller, but after one year of compliance you found that
8 only eight appeared to not be in compliance. There were
9 seven compliance agreements that were entered into that
10 took you into the out years rather than going back and
11 imposing fines on the years that they did not appear to
12 be in compliance, that would be 1996, with one exception
13 and that person was fined as a result.

14 I would like the Board to entertain the
15 possibility of looking at 1999 as the most important and
16 current year for which you have data, enter into a
17 certification process for that year, and if there is a
18 deviation on the success of the compliance that's
19 verified by those product manufacturers, at that point
20 consider looking back at '98 and '97.

21 The reason I suggest that is that the goal of
22 this Board, I think, is to increase plastic package
23 recycling and plastic material recycling. All the
24 compliance agreements that you entered into for the '96
25 compliance year looked forward rather than backward. The

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1 example I'll give you is a company is in compliance in
2 1997. For whatever reason due to market anomaly they
3 fell out of compliance in 1998 but they were back in
4 compliance in 1999. How would you treat such a company?
5 You don't need a compliance agreement because they're in
6 compliance. There was an anomaly that brought them out
7 of compliance. You could levy a fine. You have the
8 authority to do that but I don't think that would be in
9 the best interest of the program. Similarly, if you were
10 not in compliance in '97 but you were in '98 and '99, you
11 should get a gold star and move forward.

12 Really everything is focused on 1999, 2000 and
13 2001, into the future. All of your compliance agreements
14 would support that and I think the goal of the Board,
15 which would be to get caught up, I think every Member
16 today who spoke said let's get caught up.

17 That in our opinion would be the most impactful
18 way to get caught up. Look at the year that's the most
19 current, the data is available. And I will tell you
20 representing product manufacturers, none of our members
21 will sign a certification form without collecting the
22 data, preparing it as if we were submitting it to you.
23 We don't operate that way. It sure looks easy. All I
24 need to do is sign this form and we're good for '97 and
25 '98. That's a risk that no company that I'm aware of is

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1 willing to take.

2 I would urge the Board to consider going to '99
3 where you have current data readily available, it's still
4 available and fresh in our minds, establish the
5 compliance process for that with the industry sectors
6 that have been already identified, and let's move
7 forward. Let's all of us move forward so we don't have
8 these lengthy debates and discussions year in and year
9 out. I would at least like to have discussed as a
10 possible item recognizing the latitude to not enforce but
11 also the latitude to enforce.

12 CHAIR MOULTON-PATTERSON: Thank you very much,
13 Mr. Hastings.

14 Mr. Mark Murray, Californians Against Waste.

15 MR. MURRAY: Madam Chairman, Board Members, Mark
16 Murray with Californians Against Waste. I apologize. I
17 missed the first part of the discussion prior to lunch,
18 but I think I've been brought up to speed on this.

19 Just a little bit of background for those Board
20 Members that weren't here in January and, frankly,
21 throughout much of last year when we were working on this
22 issue. There was a desire I think on all stakeholders'
23 part, industry as well as the environmental community, to
24 streamline the process and close the gap between the time
25 when the recycling rate data is collected and the

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1 certifications are pursued with the manufacturers.

2 CAW did not object in January when the Board
3 decided to postpone the certifications for 1997 in an
4 attempt to consolidate the '97, '98 and '99
5 certifications, which is where we are today. I'm a
6 little concerned if some folks on the industry side are
7 now saying that well, we want to take '97 and '98 off the
8 table, and I'm not sure that that's what I'm hearing but
9 I would be concerned because I thought we had a bit of an
10 understanding on that.

11 I think I'm on the same page with Mr. Hastings
12 in saying that our priority at this point in time is 1999
13 compliance. We're trying to move forward with this law
14 and it seems to make sense that the priority and
15 enforcement should focus on 1999. At the same time, we
16 would be opposed to taking 1997 and 1998 off the table in
17 terms of giving -- the Board should retain the ability to
18 pursue enforcement if they feel there's some public
19 policy need for pursuing that in 1997 and '98.

20 So as I'm listening to this, it seems to me the
21 debate then, in talking to Mr. Livingston, may be in
22 terms of are you asking the manufacturers to certify at
23 this point in time for 1997 and 1998, and I'm not
24 entirely convinced that that's essential to move forward.
25 I think as long as the Board is retaining the ability to

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1 pursue enforcement on '97 and '98 for folks that may be
2 totally recalcitrant and just nailing them for '99 isn't
3 enough. But frankly if folks are in compliance in 1999,
4 you know, I think that that's probably -- it's time to
5 kind of -- there's still 2000 and 2001 to come, so I'm
6 not sure that we should be spending too much energy on
7 that.

8 If the compromise here is to, say, ask them for
9 the certification for '97 and '98, but if they don't --
10 maybe not compel them at this time to submit the
11 certification for '97 and '98 but at the same time
12 retaining the Board's right to go after that at some
13 point in the future if you so desire. So it seems like
14 that's a way to possibly move forward on this, but other
15 than that, you're doing a great job.

16 (Laughter)

17 CHAIR MOULTON-PATTERSON: Thank you.

18 BOARD MEMBER JONES: I've got a question for
19 Mr. Murray.

20 CHAIR MOULTON-PATTERSON: Mr. Jones.

21 BOARD MEMBER JONES: I just want to make sure I
22 got it right because sometimes I don't get it right. If
23 we were to send out a thousand certifications for the
24 year 1999 and some of them were just absolutely not in
25 compliance, then we would look at -- we would retain the

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1 right in the certifications to go back and look at '97
2 and '98 on those in '99 that did not -- that did not
3 comply.

4 MR. MURRAY: However you want to define it in
5 terms of when you can go after folks, yes, that's exactly
6 what I'm saying. Go after folks in 1999. I can't
7 imagine why you would pursue '97 and '98 if somebody
8 gives you the 1999 information and they're totally up to
9 speed and they either agree to a compliance order or they
10 are satisfying the requirements of the law.

11 BOARD MEMBER JONES: I guess what I want to find
12 out, let's say they're failing terribly.

13 MR. MURRAY: They're failing terribly.

14 BOARD MEMBER JONES: Then do we go back to '98
15 and '97?

16 MR. MURRAY: You've retained the authority to
17 do that. I'm proposing that you retain the authority to
18 go after them for '97 and '98 because you feel they
19 deserve to be piled on because they're just not --
20 they're not working with you. So you retain that
21 authority, but at this particular point in time you don't
22 pursue it for all thousand.

23 CHAIR MOULTON-PATTERSON: Mr. Eaton.

24 BOARD MEMBER EATON: I don't know how you can
25 retain it because statutorily we're required. We can't

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1 retain authority because they'll come back and if you try
2 to go back to '97 and '98 and say sorry, you have no
3 statutory authority in which to retain that authority.
4 What you have to do is you have to get the certification
5 for '97 and '98 but not ask for the data. Maybe there's
6 a little semantics there, but then in '99 you ask for the
7 certification with the data. Then you've reserved your
8 right through an audit process to go back to '97 and '98,
9 but there's nothing in the statute that allows us to
10 forego or retain authority because then they would be
11 exactly right in their position, why are you hanging us
12 out there and saying that you're not going to go if we
13 decide to go back through.

14 You have to, under the statute, certify. So you
15 certify '97 and '98, which is what the staff proposed,
16 and then in '99 you ask for the data. That was what the
17 original proposal was. If I'm understanding -- is that
18 not correct?

19 So under the statute, we as a Board have an
20 obligation to have certifications in those years. You
21 don't think so, Mr. Hastings? You show me where in the
22 statute it says we have the ability to retain that.

23 MR. MURRAY: I want to just say that I do
24 support the original staff recommendation and you've just
25 articulated the original staff recommendation. It

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1 seems -- frankly, prior to Mr. Hastings' comment, I was
2 assuming that the big hassle was providing the data.
3 He's making I think a decent point that in order to do
4 the certification, they're going to go ahead and collect
5 the data internally anyway, and I can appreciate that
6 point.

7 I would be interested in what your legal counsel
8 has to say about the mandate on the Board to actually
9 pursue certification every year, whether you actually
10 have that authority to forego it.

11 MR. BLOCK: First of all, I think there's sort
12 of two different issues here we're talking about in terms
13 of authority. I think what Board Member Eaton was
14 talking about was whether or not we could retain the
15 authority at some point in time without doing a
16 certification as opposed to do we have to do legally a
17 certification every year.

18 The statute itself is phrased in terms of "may,"
19 the Board may do certifications. So in theory the Board
20 would never have to do a certification, ever, from the
21 strictly legal point of view. Now, obviously there's a
22 lot of other factors to go into implementing this program
23 and the like, but I think the point that Board Member
24 Eaton was making was if we are, in fact, doing
25 certifications and we are talking about retaining the

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1 right to go after '97, that creates some issues if we
2 essentially say we're not going to look for
3 certifications in '97 or '98, just '99, and then
4 subsequently decide now we're going to go back and look
5 at '97 and '98.

6 That raises some equitable issues. That
7 raises -- there's other issues that have been talked
8 about, not this morning, about record keeping and those
9 sorts of things. There are quite a few complications,
10 some of which are legal, some of which are more practical
11 in leapfrogging that way. I don't know if that --

12 BOARD MEMBER EATON: We're all saying the same
13 thing. We're just making sure we dot our Is and cross
14 our Ts so that there is that ability to retain that and
15 we do.

16 MR. BLOCK: Let me add one more thing because
17 you were not here actually before we took a lunch break.
18 One of the issues that was being debated this morning,
19 although I'm not sure that's now changed, is at least one
20 person raised the issue as to whether we even had the
21 authority now to go back and look at '97 since we are
22 more than a couple years after that.

23 So within that context, Board Member Eaton's
24 comments are within that context. We've got folks that
25 are saying you can't even do this at all, let alone

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1 ignore it and then change your mind and go back. And I
2 think those are some of the issues that --

3 MR. MURRAY: Again, I'm supportive of the
4 original staff recommendation but also appreciative of
5 the concerns that were raised in that staff
6 recommendation about the potential difficulty of getting
7 the -- requiring folks to provide the 1997 data. So I
8 guess my comments, given that there seems to be a
9 movement from -- I understood there to be a movement away
10 from the staff recommendation -- that our priority would
11 be the 1999, focusing on 1999 enforcement, if one is
12 moving away from the staff recommendation.

13 But I'm reading the statute exactly the way you
14 are with regard to the "may" on certification. I don't
15 see how leapfrogging, though, is taking away from the
16 authority to -- of the Board to pursue certification and
17 enforcement against someone at some later date. I'm not
18 seeing how that would be triggered, but I'm not an
19 attorney.

20 CHAIR MOULTON-PATTERSON: Mr. Block, did you
21 want to comment?

22 MR. BLOCK: Well, just again to provide some
23 context, that's essentially -- we were having that issue
24 raised this morning just based on the action we want to
25 take today, and I think the idea of just doing

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1 certifications for '99 with the idea that we're retaining
2 authority takes that issue that was raised this morning
3 by other parties in the audience and adds to it because
4 now you've actually taken some legal action to look at
5 '99.

6 And then the idea being, let's say, if we hit
7 2000 and we've decided that a particular company is not
8 willing to enter into a compliance agreement, so then we
9 would turn around and say okay. Now we're going to
10 require a '97 and '98 certification and go after you for
11 those because you're not cooperating with us just sort of
12 adds additional fuel to that -- the legal issues that are
13 potentially there that again were raised this morning
14 about whether we can even look at '97 at this point.

15 MR. MURRAY: I don't disagree with you. I think
16 it's worth that roll of the dice, though.

17 MR. BLOCK: That's not my decision to make.
18 That's the Board's decision to make.

19 CHAIR MOULTON-PATTERSON: Thank you, Mr. Block.
20 Senator Roberti.

21 BOARD MEMBER ROBERTI: Counsel, please explain
22 to me. If we leapfrog '97 and '98 -- this is the same
23 question that's been asked over and over, but I want to
24 hear it again. If we leapfrog '97 and '98 and the
25 company is not in compliance with '99, and we want to

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1 insist upon a compliance order for '99 and they're not in
2 compliance -- and they failed to be in compliance for
3 that year, maybe 2000 or whatever, can we go back to '97
4 and '98 for the following purposes: One, as a measure of
5 our own subjective decision making as to what is good
6 faith because in my own mind the severity of a compliance
7 order would depend upon good faith of the company in the
8 processes sequentially. It's conceivable in my mind that
9 a company could have one bad year, although probably if
10 they were in compliance in '99, they weren't in
11 compliance in '97 and '98, but everything is evidentiary
12 of everything else; and two, just to hit a company that
13 is obstinate with three years, then fine. You don't want
14 to comply in '99? Then maybe we should hit you for '97
15 and '98 as well. That often happens in an enforcement
16 action when you raise the ante on a company that's
17 obstinate for two reasons -- indicia of good faith for
18 our own decision making, can we go back to '97 and '98;
19 and second, as giving more muscle to our enforcement
20 power in the year in which we are doing, which is '99, as
21 to whether there was compliance in '97 and '98 to tell a
22 company fine. You don't want to go along in '99? Then
23 you're raising the ante on yourself and you're going to
24 have to battle out '97 and '98. Can we go back for those
25 reasons or is it cloudy?

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1 CHAIR MOULTON-PATTERSON: Mr. Block.

2 MR. BLOCK: Okay. Well, a couple of different
3 parts to the answer. Certainly if we're taking an
4 enforcement action in a current year, we can go back and
5 look at prior history to the extent that we're just
6 looking at, as you said, indicia of good faith. We would
7 not be able to fine, assess penalties, for those early
8 years unless we also did a certification. One of the
9 problems that we run into, at the very least we would be
10 having a talk about revising our regs because if we're
11 now moving out a couple of more years, the emergency
12 regulations the Board just adopted -- that were effective
13 in January changing the record keeping data, we might
14 already be reaching the end of that four-year time, but I
15 think that --

16 BOARD MEMBER ROBERTI: You lost me on that.
17 What did we do?

18 MR. BLOCK: We used to require these records to
19 be kept for two years, and then at the end of last year
20 the Board adopted emergency regulation to make that
21 period four years because we were suddenly going to be
22 more than two years past the compliance year. If you're
23 talking about, to use the phrase, leapfrogging and if
24 we're moving out potentially another year or two if we're
25 doing enforcement action, we may be losing some of those

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1 records.

2 I will not tell you today as we sit here in the
3 public meeting that we could not absolutely go back after
4 folks for '97, '98. I think it raises a lot of the same
5 issues that have been raised today about equity and
6 whether those records are available and the like and so
7 it creates some issues. I think that the staff proposal
8 was attempting to address that by saying let's at
9 least -- if as has been said it's true that even if a
10 one-page certification is being done in '97, that the
11 companies have to go through the exercise of gathering
12 that data, we know that data is available somewhere, that
13 they've gone -- and it's readily available, if you will.
14 So that this year if we decide we need to go back and
15 look at '97, we can take care of that relatively quickly.

16 If we've simply said essentially for now you
17 don't have to worry about '97, '98, that data may be
18 irretrievable. There have been some comments that the
19 '97 data may already be irretrievable, so --

20 BOARD MEMBER ROBERTI: Based because on --

21 MR. BLOCK: So it's not so much --

22 BOARD MEMBER ROBERTI: Because of the
23 regulations on records.

24 MR. BLOCK: Destroyed those records on January
25 1st. I believe the effective date of the emergency reg

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1 change was January --

2 BOARD MEMBER ROBERTI: Why was that an emergency
3 reg?

4 MR. BLOCK: To try and beat the December 31st
5 date that we missed by, I believe, a week or two. It's
6 not that we absolutely -- I certainly, as your legal
7 counsel, wouldn't want to tell you absolutely you
8 couldn't pursue an action, but I think there are some
9 potential problems with doing that from a practical point
10 of view and from some legal issues in terms of equity and
11 that sort of thing. So I don't know if that helps,
12 but --

13 BOARD MEMBER EATON: Is the certification
14 required prior to any imposition of fines or penalties?

15 MR. BLOCK: For that particular year, yes.

16 BOARD MEMBER EATON: So what you would be doing
17 is if you didn't -- let's just hypothetically you go back
18 and you find something in '99 that raises a red flag and
19 because of that you want to go back to '97 and '98. As
20 it relates to your indicia of good faith, the answer is
21 yes, without question that you can go back and look at
22 that, but if you wanted --

23 BOARD MEMBER ROBERTI: To the extent we have the
24 information.

25 BOARD MEMBER EATON: To the extent we have the

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1 information, but if you wanted to assess a fine or
2 penalty, at that point before you go back and do that you
3 have to go back and have them certify in '97 that
4 company, so by what we're doing short-circuiting. I
5 think what staff was going to do was we're going to take
6 away that condition precedent by having them certify '97
7 and '98 so if we have to go back and look at the fines
8 and penalties, we've got that option. That's what I
9 think we were trying to do and that's what I think you
10 were answering.

11 CHAIR MOULTON-PATTERSON: Thank you.

12 MR. BLOCK: Said much more articulate than I
13 did.

14 BOARD MEMBER EATON: I won't bill you.

15 CHAIR MOULTON-PATTERSON: I personally am very
16 comfortable with the staff's proposal. I'm going to
17 support it. Is there anything staff would like to say in
18 light of the discussion. Anything more? Okay.

19 BOARD MEMBER MEDINA: Would you like to make a
20 motion?

21 BOARD MEMBER EATON: Could I raise one more
22 point?

23 BOARD MEMBER ROBERTI: You raise your point.

24 BOARD MEMBER EATON: If we were going to do
25 that, we have the issue of audits.

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1 CHAIR MOULTON-PATTERSON: Right. Didn't we
2 mention that?

3 BOARD MEMBER EATON: If that is part of the
4 resolution, that would be something that I would like to
5 have in the resolution.

6 MS. WOHL: Sure. Can I just clarify that? When
7 you say an audit, you can do a formal audit, which we
8 obviously would have to have dollars to accomplish that,
9 or you can do what I was kind of interpreting which is
10 the ability to ask for the data to support what they
11 said, which is an audit of some sort but not a formal
12 audit. So how do you feel about that?

13 BOARD MEMBER EATON: We did some audits last
14 year, didn't we, on these, which was a formal audit?

15 MS. WOHL: We've done them on the newsprint, I
16 believe, and the trash bags, but we've never had a
17 vehicle to do them on this. So that was my original
18 thought was that we could just ask for the data and see
19 if it supported what they had self-certified, and if you
20 consider that, otherwise we would have to probably talk
21 about the vehicle to accomplish a full-blown audit.

22 BOARD MEMBER ROBERTI: Madam Chair, I have --

23 CHAIR MOULTON-PATTERSON: Senator Roberti.

24 BOARD MEMBER ROBERTI: I have one question. I
25 think I like the staff recommendation now. However, what

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1 happens if a company refuses to sign if they're in
2 compliance?

3 BOARD MEMBER JONES: For which year?

4 BOARD MEMBER ROBERTI: For '97, '98. What are
5 the options open to the Board? Because here's my
6 thought. If we fail -- if we treat everything the same
7 way, we're doing -- we're engaging a perfunctory written
8 notice, which I grant fine, at least keeps our options
9 open. That only does it for the ones who have been kind
10 enough to sign that they're in compliance. If they don't
11 sign that they're in compliance and if we don't
12 contemplate any action, it would seem that it would
13 put -- it would seem to put things upside down and force
14 against the people who are in church, to mix my
15 metaphors.

16 MR. BLOCK: I'm going to give you a two-part
17 answer because we have the potential issue looming for
18 the '97 records. Assuming let's talk about '98 where we
19 don't have that issue. If someone -- once the Board
20 decides to send the certification to a particular
21 company, if they are refusing to certify, then we can
22 also take enforcement action against them. Once we
23 request the certification from them, they are then
24 obligated to, in fact, certify. So if they're not
25 certifying, we can take action.

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1 That's also true for '97. The problem -- and
2 this is what we were talking about. It's a little more
3 complicated. If we've got somebody that is saying I'm
4 not going to certify because I destroyed the records
5 because January 1st hit, we would have to take a look at
6 that. We're not sure at this point exactly how that
7 might play out.

8 But to answer the general question just in a
9 normal year, refusal to certify would allow us to take
10 enforcement action the same way as if they certified
11 and said that we're at 10 percent.

12 BOARD MEMBER EATON: By the same token, if a
13 company, or product manufacturer I think is the semantics
14 that's used, certified in '99 that they were in
15 compliance and in '98 refused, that would go to the issue
16 whether or not you wanted to seek enforcement. But it
17 would be in their best interests to certify one way or
18 the other that they were out of compliance because that
19 would be an indicia of good faith. After all, that's
20 what we're talking about.

21 If they were out of compliance in '98 and got
22 into compliance in '99, then the overall thrust is that
23 to get them into compliance we probably would not want to
24 seek any kind of remedy against them because they were
25 not only truthful but in good faith acting to say yeah,

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1 we weren't there but we are there later. That's really a
2 judgment call at the end.

3 BOARD MEMBER ROBERTI: Here is my thought and
4 that is if a company is not in compliance in '98, feels
5 that the Board is not going to act with rapidity on this
6 matter, which for reasons not all entirely the Board's
7 fault happens, then it might be smart to say that you're
8 not in compliance. We keep our rights of enforcement
9 only against those who have signed the order, whatever
10 you call it, and because of our destruction rule, which I
11 just found out about now, we pretty much waive it on
12 anybody who just figures well, they'll just tough it out.

13 We have had instances, if I recollect, of
14 companies that just decided to tough it out. I can't
15 remember if on RPPC, but I do remember we've just had
16 recalcitrant companies, and I think in RPPCs because I
17 was paying attention, even though I wasn't voting, where
18 we're just not going to do it and gave the jester to the
19 Board.

20 MR. BLOCK: That was a concern that we had, and
21 I think that was part of the impetus behind the emergency
22 regulatory change, to make the record retention
23 requirement four years. When it was two years, and
24 that's -- that was a much greater potential since your
25 rate isn't even set until part way into the first of

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1 those two years, but with a four-year record retention
2 requirement that's in place now, that's a fairly long
3 time for the Board to take to take some action now that
4 we're getting caught up on the rate.

5 BOARD MEMBER ROBERTI: Well, for my own vote I
6 intend to vote for the staff recommendation. However,
7 I'm voting for it on the premise that if a company says
8 they were not in compliance in '97 or '98, that that
9 should be put swiftly on our agenda so that we at least
10 debate what kind of action we're going to be taking
11 because a company may decide to say that simply to run
12 the clock out.

13 CHAIR MOULTON-PATTERSON: I believe Mr. Medina
14 was next and then Mr. Jones.

15 BOARD MEMBER MEDINA: I was prepared to move the
16 resolution and also try to figure out a way to get the
17 audit, whether a separate motion needs to come back at a
18 later meeting with some mechanism for an audit for this.

19 CHAIR MOULTON-PATTERSON: Do we have enough for
20 the audit in this? You said that we could do random
21 audits; isn't that right, Mr. Eaton? Did we get that
22 cleared up?

23 BOARD MEMBER EATON: I think you're just saying
24 there shall be an audit component that will be determined
25 by the Board at the appropriate time and then we'll

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1 figure out whether there's sufficient funds if we want to
2 go out and hire or do you want to do it internally by
3 just requesting additional information and/or some other
4 mechanism. I think that's what you were looking for.

5 MS. WOHL: I wanted to make sure we understood
6 how detailed an audit we were talking about.

7 CHAIR MOULTON-PATTERSON: So Mr. Medina has
8 made the motion. I will second it, but Mr. Jones would
9 like to speak to it.

10 BOARD MEMBER JONES: I just have a question.
11 We're hearing -- I think that what the industry has said
12 that this is not something that is lightly done, you
13 don't sign a certificate that says you're in compliance
14 without doing the math, and the math means you contact
15 every producer. You're shaking your head no. You don't
16 think it's the math?

17 BOARD MEMBER ROBERTI: No, I don't agree with
18 that. Every industry that comes before us, especially an
19 association, is going to want us to believe that they're
20 made up a hundred percent of angels, and industry people
21 are no different than politicians.

22 (Laughter)

23 BOARD MEMBER JONES: I've been in the industry a
24 long time. I'm not sure I agree with you.

25 (Laughter)

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1 BOARD MEMBER ROBERTI: Angels, devils and people
2 of mixed virtue.

3 (Laughter)

4 BOARD MEMBER JONES: Why do the certification?
5 Why not just call them all in error?

6 BOARD MEMBER ROBERTI: No, no. It's like doing
7 your income taxes.

8 BOARD MEMBER JONES: We do that legally, too.

9 BOARD MEMBER ROBERTI: Everybody thinks they do
10 it legally, but I would say half the returns are open to
11 contest. So the fact that somebody signs under perjury
12 just doesn't set my heart beating into thinking that
13 everything is copacetic. No, I don't think so.

14 You asked me if I was shaking my head. I didn't
15 want to go into the shpile contesting you, but you asked
16 me and that's just frankly how I feel. An association
17 would not be doing its job if they came up here and said
18 we have devils in our membership. I would expect them
19 never to say that.

20 BOARD MEMBER JONES: I expect the devils to sign
21 it without doing the math. The devils would sign it
22 without doing the math. It's the legitimate ones that
23 would do the math. And all I'm asking is the staff
24 proposal is to do all three years, to get a certification
25 from '97, '98 and '99, and there are issues on the other

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1 side of that. I heard the sponsor of the bill saying
2 that if in '99 we got compliance, that's what he was
3 looking for; and if we didn't get compliance in an audit
4 for '99, we could go back to that person in '98 and '97.
5 That would seem to me to be something that we could
6 write administratively into each one of these
7 certifications for '99, that if an audit we find the
8 numbers not right, we will go back and look at '98 and
9 '97 to find a trend.

10 What I'm wondering -- what I want to do is
11 help -- and I know everybody here does and we all have
12 little different ways of getting there. The RPPC, it's
13 critical that we continue to push markets and continue to
14 get people to recycle this stuff, but if we're walking
15 down a path by trying to get all three years when it
16 could be legally debated and whether it's a court of law
17 or whatever and we don't do anything within the next five
18 years and lose that ability, that's not an outcome I'm
19 prepared to vote for.

20 So I'm asking, based on what the sponsor is
21 saying, if it makes sense to try to fashion under '99 a
22 requirement that if they were not in compliance we may go
23 back and look in '98 and '97 to see if there is a trend.
24 That I don't think would have anything to do with the
25 law.

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1 Or I'll go back to my original discussion and
2 say let's pick 1200 names, none of them different, do 500
3 for '99 and 350 for '97 and '98, which I think is a
4 pretty good burden for this staff, but I'm worried about
5 this legal debate about how many times you can ask people
6 for certification and I am also worried about the
7 interpretation of signing a certification and what the
8 background is behind that.

9 CHAIR MOULTON-PATTERSON: Okay.

10 We have a motion and a second on the floor.
11 Mr. Hastings asked for one quick comment.

12 MR. HASTINGS: Thank you, Madam Chair.

13 I just want to conclude our industry comments or
14 at least on behalf of GMA. This morning there was a
15 discussion of let's not burden the product manufacturers
16 any more than necessary with this compliance process.
17 The point I would like to make is if you do '97 and '98
18 as proposed, you are requiring the product manufacturers
19 to go through the full process, all the documentation
20 before any person would sign that document under penalty
21 of perjury and submit it to this Board. So you are
22 creating that process. You had perhaps an historical day
23 when Mr. Murray and I agreed that '99 is the year that
24 this Board ought to focus on and we're in agreement on
25 that. I think that's meritorious of discussion.

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1 What I proposed earlier, take a look at '99, see
2 if there's a deviation from what you experienced in 1996.
3 At that point make a decision about what further looks at
4 '97 and '98 that this Board would undertake.

5 Our history and precedent with the Board is to
6 enter into compliance agreements to get you into the out
7 years, not to go back and beat out penalties. I think
8 there's an agreement in concept of let's all look forward
9 from 1999, which is the most recent year that we have to
10 look at, they're accurate figures, and then let's move
11 forward. But having that cloud of '97 and '98, you would
12 be creating three separate years of certification
13 verification by product manufacturers that is a very
14 rigorous and expensive process.

15 If Senator Roberti would send a note to my boss
16 that I'm doing my job, I would appreciate it.

17 CHAIR MOULTON-PATTERSON: Thank you,
18 Mr. Hastings.

19 (Laughter)

20 BOARD MEMBER ROBERTI: The more I disagree with
21 your subjective analysis, the better you're doing your
22 job.

23 (Laughter)

24 BOARD MEMBER ROBERTI: You're doing very well
25 and people can have a disagreement, but I want to just

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1 emphasize one point, and I know I tried to make it one
2 other time, but the fact that somebody signs under
3 penalty of perjury, we all sign our income taxes under
4 penalty of perjury and maybe the IRS is over-enthusiastic
5 at times, but the fact is there is not a sane soul who
6 believes that everybody who fills their income tax under
7 penalty of perjury has filled it out correctly or even
8 has knowingly or carefully filled it out correctly. So
9 it just doesn't -- and many of the people are very
10 sophisticated. In fact I say some of the most
11 wealthiest, most sophisticated people are the ones who
12 are more in the gray area. I'm just not optimistic about
13 the gentleman who is well-representing his association.

14 CHAIR MOULTON-PATTERSON: Thank you, Senator
15 Roberti.

16 Mr. Paparian, and then we're going to take a
17 vote.

18 BOARD MEMBER PAPARIAN: A couple of quick
19 things. This discussion has been very healthy and has
20 actually helped me to realize that the staff really did
21 think this through well and think of all the issues here
22 and come up with something that I think is going to
23 ultimately be quite workable.

24 I have sort of an institutional memory question
25 being a new person here and maybe Mr. Murray might be

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1 able to help me with this. How long have the industry
2 folks known that they may need to put forward this data
3 in some form like the 1997 data? How long have they
4 known that they may need it?

5 MR. MURRAY: The law was supposed to take effect
6 in 1993. It didn't -- it was postponed for two years.
7 So the law has effectively been in effect since 1995 and
8 they know that they would have to provide this
9 information every year. So they have been -- they should
10 have expected to provide this data in January when the
11 certification was actually finally brought before the
12 Board.

13 BOARD MEMBER PAPARIAN: That's kind of what I
14 thought. It's been out there for a while.

15 MR. HASTINGS: Product manufacturers were aware
16 that they needed to retain the records the day that the
17 Board certified the 1997 rate, which was sometime in
18 1999. That's the trigger mechanism, when the rate is
19 certified, not that compliance year because then the
20 first line of defense is the statewide recycling rate and
21 until that rate is calculated, we don't know.

22 BOARD MEMBER PAPARIAN: But you knew the law was
23 passed several years before that and that this sort of
24 information might well be needed and quite likely would
25 be needed.

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1 CHAIR MOULTON-PATTERSON: Okay.

2 Were you finished, Mr. Paparian?

3 BOARD MEMBER PAPARIAN: Yes.

4 CHAIR MOULTON-PATTERSON: Secretary, please call
5 the roll.

6 BOARD SECRETARY: Eaton.

7 BOARD MEMBER EATON: Aye.

8 BOARD SECRETARY: Jones.

9 BOARD MEMBER JONES: I wanted to get the
10 resolution or the motion read back so I can understand.

11 CHAIR MOULTON-PATTERSON: I'm sorry. It's been
12 so long.

13 (Laughter)

14 CHAIR MOULTON-PATTERSON: I'm really sorry.

15 We have a motion by Mr. Medina, seconded by
16 myself, for Resolution 2000-329 for approval of a
17 consolidated Rigid Plastic Packaging Container compliance
18 certification for the 1997, '98 and '99 compliance years.

19 BOARD MEMBER JONES: Madam Chair, I would like
20 to offer a substitute motion.

21 CHAIR MOULTON-PATTERSON: Okay.

22 BOARD MEMBER JONES: I would like to offer a
23 substitute motion that says we do 1999 with the caveat
24 that if in 1999 certification to a thousand companies we
25 find a problem, part of the agreement is that we go back

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1 and look at 1998 and 1997 data per company for a trend.

2 Hearing no second.

3 CHAIR MOULTON-PATTERSON: No second. So we'll
4 go back to the original motion by Medina and seconded by
5 Moulton-Patterson for Resolution 2000-329.

6 Secretary, please call the roll.

7 BOARD SECRETARY: Eaton.

8 BOARD MEMBER EATON: Aye.

9 BOARD SECRETARY: Jones.

10 BOARD MEMBER JONES: No.

11 BOARD SECRETARY: Medina.

12 BOARD MEMBER MEDINA: Aye.

13 BOARD SECRETARY: Paparian.

14 BOARD MEMBER PAPARIAN: Aye.

15 BOARD SECRETARY: Roberti.

16 BOARD MEMBER ROBERTI: Aye.

17 BOARD SECRETARY: Moulton-Patterson.

18 CHAIR MOULTON-PATTERSON: Aye.

19 Okay. Item number -- well, we now have to
20 change groups. Thank you very much for all your work.
21 We really appreciate it.

22 We have our Permits group right now. At this
23 time I would like to suggest -- I understand that there
24 are some people that might want to speak to Number 21
25 that aren't here, the LEA. So I would like to go to --

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1 Item Number 22 was pulled, so the way I would like to do
2 it is have Item 23, Item 24 has been pulled, and then
3 Item 25. Then we'll go to 21 and then to our closed
4 session, if that's agreeable with the Board Members.

5 MS. NAUMAN: Thank you. Good afternoon, Madam
6 Chair and Members of the Board. Julie Nauman, Permitting
7 and Enforcement Division.

8 The first item is Item 23 which is consideration
9 of approval of new sites for the solid waste disposal and
10 codisposal site cleanup program or AB 2136 program. This
11 afternoon we're bringing forward for the Board's
12 consideration three applications involving two
13 Board-managed projects and one illegal disposal site
14 grant project for multiple sites, and Scott Walker of the
15 Permitting and Enforcement Division will present this
16 item.

17 CHAIR MOULTON-PATTERSON: Thank you, Ms. Nauman.

18 MR. WALKER: Madam Chair, Members of the Board,
19 I'll go right into a description of the three projects
20 which we've reviewed in accordance with Board-approved
21 requirements under the AB 2136 site cleanup program.

22 The Live Oak Road illegal disposal site is
23 located within an agricultural and residential area in an
24 abandoned mushroom farm site in Monterey County. This
25 site was identified by the County in 1997. It's been the

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1 location of numerous fires and large-scale illegal
2 dumping activities including household hazardous waste,
3 solid waste and tires. This site constitutes a confirmed
4 condition of pollution and nuisance clearly constituting
5 the highest AB 2136 priority category based on a
6 comparison with state minimum standards and threat to
7 public health and safety.

8 Since this site was identified, the County has
9 conducted extensive enforcement actions and has
10 implemented several interim measures to reduce the threat
11 posed by the site. One responsible party who has been
12 identified is currently incarcerated under related
13 charges. A court order was obtained against property
14 owners that were a limited partnership. This partnership
15 was dissolved and they are bankrupt.

16 The County has insufficient funding and contract
17 procurement resources to complete a timely cleanup of
18 this site and has requested a Board-managed cleanup with
19 substantial contributions of in-kind services.

20 The Board's contractor under this request would
21 be -- could be mobilized within weeks to demolish the
22 dilapidated structures and segregate, load and haul waste
23 for recycling to the extent practicable and also dispose
24 of any residual solid waste that could not be recycled.

25 The estimated Board cost for this project is

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1 \$280,000. The County's proposed contribution of in-kind
2 services includes one, coordinating all site access and
3 administrating cost recovery on behalf of the Board which
4 is proposed to be a lien on behalf of the Board on the
5 property.

6 As an update to what's in the agenda item, as
7 per most of our projects, the majority of our illegal
8 disposal site Board-managed projects, the County will
9 assist us on household hazardous waste disposal. In
10 other words, our contractor would segregate household
11 hazardous waste and the County would assist us in
12 managing this as they normally are a part of their
13 household hazardous waste program. The County is also
14 getting the tipping fees waived for any disposal of
15 residuals.

16 The County has also -- has done some previous
17 partial removal actions and site security and has gotten
18 hazardous waste -- regulated hazardous wastes removed
19 from that property.

20 The final contribution that the County will
21 continue to do post-cleanup monitoring to ensure that no
22 future illegal disposal activities occur at the site and
23 we anticipate that there would be no further action
24 required other than that monitoring after we would be
25 done. The County is also administrating the local

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1 government tire cleanup grant approved by the Board in
2 April to clean up the estimated 3,000 tires at this site.

3 The second project under consideration is the
4 Tuolumne County Solid Waste Local Enforcement Agency
5 request for a \$20,000 grant for illegal disposal site
6 cleanup. The Board may remember that we -- the Board
7 approved a previous grant in 1998 and this is basically
8 the same type of program. This new grant is proposed to
9 build on the success of the previous grant and it has a
10 component of significant contributions from a prominent
11 rural community volunteer group and this is called the
12 Citizens Acting Responsibly for the Environment. The
13 acronym is "CARE."

14 To give you an update on the prior grant, the
15 LEA was able to clean up 16 confirmed nuisance sites.
16 They identified nuisance sites, confirmed nuisance
17 qualifying under the Board's criteria in the County, and
18 they had 2,200 hours of volunteer service, volunteer
19 labor and equipment. They removed and recycled
20 approximately 49 abandoned vehicles, 15 tons of tires, 48
21 tons of scrap metal and over 101 tons of residual solid
22 waste. And subsequent to the project, on their own
23 they've cleaned up a significant additional amount.

24 The Board's grant funding would be used to clean
25 up the sites, the confirmed nuisance sites identified by

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1 the LEA. It would pay disposal costs beyond what the
2 County can waive. It will assist in equipment purchase
3 or rental as necessary, fuel, access restrictions and
4 public education. The County has agreed to waive their
5 portion of the franchise tipping fee which amounts to
6 about \$27.35 a ton.

7 Pursuant to the Board's approved process for
8 waiver of cost recovery or for consideration of cost
9 recovery, staff are recommending that cost recovery for
10 this particular request be waived because number one, the
11 sites are located primarily on public right-of-ways.
12 These are maintained for the public benefit and use. The
13 second basis is that the public right-of-way property
14 owners did not cause the disposal of the waste. They
15 will not gain any benefit due to the condition of the
16 properties, and they are also contributing significant
17 in-kind services. The third basis is that it is
18 extremely unlikely they will be able to identify any
19 responsible parties for the dumping on these sites.
20 However, the County is actively involved in public
21 education and also surveillance and enforcement
22 activities. They do look for dumpers and do press
23 prosecution under their local ordinances with -- they'll
24 be subject to fines and citation. I again remind the
25 Board the decision not to pursue cost recovery requires

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1 four affirmative votes.

2 The final project is the City of Lindsay
3 disposal site which is owned and was operated by the City
4 of Lindsay which is in Tulare County. The site is within
5 a 15-acre parcel. That parcel is used and dedicated as a
6 public waste water treatment plant. The site operated
7 prior to regulations up into the 1970s as a city
8 municipal solid waste site in which the operation method
9 was by open burning, which was an accepted practice at
10 the time.

11 Investigation by the Board and LEA staff in 1999
12 indicated significant exposed waste and also some ash
13 residue, and part of the main problem was that this site
14 was accessed by the public who was actually -- the public
15 was actually entering the site and contacting the waste.
16 Based on the exposed waste and site security violations,
17 this site is a confirmed condition of pollution and
18 nuisance with a prioritization -- highest prioritization
19 category of A-1 under the program.

20 The City of Lindsay is in an area of significant
21 financial need. Their statewide unemployment rate is
22 significantly higher than the statewide average and their
23 per capita income is much lower. The Board in a review
24 of this application basically confirmed -- board staff
25 looked at their budget. They have a limited solid waste

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1 budget and they're under deficit spending right now.
2 They do not have the funding or the staff resources to
3 complete a bid process on their own to ensure
4 cost-effective and timely cleanup. On that basis they've
5 requested a Board-managed cleanup of this site or
6 abatement project of this site and -- but have committed
7 to substantial in-kind services.

8 The proposed project would consist of
9 consolidating and capping the waste on the site by the
10 Board's contractor and also the construction of site
11 control access. The estimated cost to the Board is
12 \$446,000 and this project would be able to be completed
13 prior to the next rainy season. The City's proposed
14 contribution of in-kind services has an estimated value
15 of \$364,000 including site fencing, erosion controls, and
16 also the bulk of it is with clean fill which would be
17 obtained from the site.

18 The completed project will address abatement of
19 the threat to the public health and safety. What this
20 means is that it will continue to require inspection and
21 enforcement by the LEA to make sure the City, who has
22 committed to maintain the site, will continue to do that
23 into the future.

24 Pursuant to the Board's approved process for
25 cost recovery, staff is recommending that cost recovery

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1 be waived for this project because one, the site is
2 dedicated as a public waste water treatment plant and,
3 therefore, will be maintained in public benefit and use;
4 the property owner will not gain a benefit due to
5 condition of the property and the value of the property
6 is significantly less than the cleanup costs; and three,
7 the City has a substantial financial need and cost
8 recovery would constitute a significant hardship. As in
9 accordance with the Board's process, the decision not to
10 pursue cost recovery requires four affirmative votes.

11 In conclusion, pursuant to the AB 2136 disposal
12 site cleanup program, staff recommend the adoption of
13 Resolution 2000-335 approving the Tuolumne County illegal
14 disposal site, Live Oak illegal disposal site, and the
15 Lindsay disposal site cleanup projects.

16 That concludes staff's presentation. Staff can
17 answer questions, and we have representatives for each
18 applicant in the audience.

19 CHAIR MOULTON-PATTERSON: Thank you, Mr. Walker.

20 We do have speaker slips. Were there any
21 questions from the Board before we proceed?

22 Mr. Medina.

23 BOARD MEMBER MEDINA: Just in regard to item
24 number one, the property owner identified as Carmel
25 Financial Group, it says here that the County could not

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1 take action against them; is that correct?

2 MR. WALKER: I think I would defer to the County
3 to answer that question more fully and I believe Walter
4 Wong -- but our understanding --

5 CHAIR MOULTON-PATTERSON: Okay. We have a
6 speaker slip for Mr. Lou Calcagno, Chairman, Monterey
7 County Board of Supervisors. Mr. Calcagno.

8 MR. CALCAGNO: Thank you, Linda
9 Moulton-Patterson. Congratulations on your new position.

10 CHAIR MOULTON-PATTERSON: Thank you.

11 MR. CALCAGNO: I know you will do well here just
12 as did you on the Coastal Commission.

13 In regards to the question, basically we're
14 dealing with the situation where the financial group
15 that's mentioned has a nice name like Carmel, but the
16 person that represented it and the person that was
17 involved in it is in prison for embezzlement and fraud
18 and basically there's no -- nothing there to go after.

19 BOARD MEMBER MEDINA: There's no way for the
20 County to get the property?

21 MR. CALCAGNO: Basically if we go with the
22 normal procedure, no. We're looking towards this remedy
23 of recovering money by going with a tax lien. That would
24 give us the option to be first on the list and we would
25 work strongly to recover the money coming from this body,

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1 if you do deem so, that we would in turn then return the
2 money to you. Lien -- tax liens would have priority over
3 any other first or second that's on the property, and we
4 feel this is the only way we're going to get our money
5 back out of it.

6 I can -- while I'm here, I'll tell you a little
7 bit about the property. The property was a mushroom
8 operation where two individuals that had very little
9 money dreamed of getting rich and they grew very rapidly
10 in the business and went beyond their means and then went
11 to a loan shark, basically, for a second deed of trust
12 and got some money with high interest and then it was
13 fraud.

14 One thing led to another and he went to prison
15 and they were left high and dry and weren't able to clean
16 up the property, was left vacant for many years. They
17 abandoned it. Tires started being dumped on the
18 property. Abandoned cars were on the property, oil
19 drums. It just went from bad to worse.

20 When the County became aware of it, it was such
21 a big problem that it was beyond the capacity of the
22 County to handle.

23 A little bit about the site, the site is located
24 in a little community called Los Lomas, which is a farm
25 migrant town. There is about 300 community homes right

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1 on the other side of the road from this. It's a jeopardy
2 to the community. It's a hazard to the children. We
3 tried to put a fence around it but we still had children
4 come on the site and get hurt.

5 It's also a big major factor in causing harm to
6 the Elk Horn Slough which it flows -- the runoff from
7 this property runs directly into the Elk Horn Slough.
8 The Slough is probably not more than two, three city
9 blocks away from this site. We're very concerned about
10 the toxic materials that could flow from this property
11 into that sanctuary that is both a national and state
12 estuary and sanctuary.

13 With those concerns, it's definite that we
14 surely need some help in getting this site clean and we
15 surely would be working very hard to make sure that you
16 could recoup the money. We would do everything within
17 our power. Timing I understand is a key issue when you
18 do a tax lien and we were -- we would work with our
19 County Council to make sure that timing was -- and
20 everything was done properly.

21 I would like to let Walter Wong, our
22 environmental health officer, say a few words.

23 CHAIR MOULTON-PATTERSON: Thank you,
24 Mr. Calcagno.

25 Mr. Wong.

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1 MR. WONG: Madam Chair and Members of the
2 California Integrated Waste Management Board, I'm Walter
3 Wong, Director of Environmental Health of Monterey
4 County, and my purpose was to come before your Board and
5 give the reasons why we're really asking for your help
6 and to eliminate really a serious public health problem
7 that's adjacent to a residential area.

8 In this residential area are low economic and
9 Hispanic people, and so they have been very concerned
10 about this, particularly with the kids that have played
11 in that area. What we found at this site and I'll tell
12 you what effort we've done, there's 60 barrels of toxic
13 chemicals as well as oil. There's a hundred abandoned
14 cars, 3,000 tires, 600 tons of garbage and dilapidated
15 buildings. What we have -- why this has been a hazard is
16 that we have actually had kids play in that area and
17 gotten hurt.

18 There have been some lawsuits filed, and again,
19 the major problem is that the owner of the property is
20 already in prison and we've already taken this to court.
21 We've won. He can't comply and he can't pay for the --
22 what the judgment that has been won.

23 The other aspect is with an illegal dump such as
24 this, it attracts more people so we're getting more
25 people dumping on this property and we are also

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1 attracting homeless people to this area. So what we have
2 done is first the District Attorney did win judgment in
3 court and we did get a temporary fencing of the property
4 so no other people can enter it. We removed the toxic
5 chemicals and the barrels of oil through getting some
6 money from the State Department of Toxics, a state agency
7 that gave us some grant, and also county money. So we
8 were able to move the 60 barrels.

9 The sheriff has hauled away the hundred
10 abandoned vehicles, and thankfully to your Board you gave
11 us a grant just a few minutes ago to remove the 3,000
12 tires. And of course the other aspect we're concerned
13 with is the leachate from the garbage is draining into a
14 national estuary, Elk Horn Slough.

15 One of the major reasons that we felt and the
16 third ground in having your Board clean up this is
17 because mainly your staff does have expertise and is very
18 efficient in doing this. As you recall, ten years ago
19 your Board assisted us in the Sand City project which we
20 cleaned up. And finally, we have a commitment from the
21 County District Attorney and our County Council that has
22 met with your staff that we would vigorously pursue the
23 recovery of the cost if you would approve this project.

24 Thank you.

25 CHAIR MOULTON-PATTERSON: Thank you, Mr. Wong.

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1 Mr. Tom McCurdy, City of Lindsay.

2 MR. MC CURDY: Thank you, Madam Chair and
3 Members of the Board.

4 First of all, I'd like to thank your staff for
5 working with the City on this project. I would also like
6 to publicly thank Mr. Jones being down in Visalia in
7 working with our American Public Works Association.
8 Appreciate that in your meeting.

9 In 1990, I became the Director of a small
10 community in the San Joaquin Valley of Lindsay, 9,000
11 people. As you've heard, we don't have as much money as
12 we'd like to have. We've tried to do things right.
13 We've done things like split waste container recycling,
14 and next year we'll be reporting that we will have
15 exceeded the 2000 goals for recycling.

16 We've tried to do things right with the old burn
17 dump that Lindsay has. In 1990 when I became the
18 Director, I started being faced with violations from the
19 County for illegal dumping, just entering the property,
20 securing the property properly, but if you can imagine in
21 a farm community, open area, has a barbed wire fence
22 around it and you have a dump. People bring stuff. They
23 go up the dirt road, they cross that barbed wire fence
24 and they dump it. Every day I have guys go out and clean
25 that stuff up.

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1 Each year I have gone to my City Manager and
2 requested money as part of our budget. Typically I would
3 request \$50,000 just to do some efforts to consolidate
4 the waste and do things right. We developed a solid
5 waste assessment questionnaire, spent about \$12,000 on
6 that. My point with that is \$12,000 on these items
7 doesn't go a long way in cleaning up problems that we
8 have.

9 I have worked very closely with your staff and
10 would encourage that the Board approve this project so
11 that I can get this thing taken care of and get on with
12 our other business.

13 Thank you very much. I would also like to thank
14 Mr. Wes Mitterman for his diligence in staying with the
15 project for us.

16 CHAIR MOULTON-PATTERSON: Thank you very much.

17 Charlotte Ginn, Tuolumne County LEA.

18 MS. GINN: Good afternoon, Members of the Board.
19 I wanted to personally thank the Board and staff for all
20 their hard work on this grant plus the previous grant
21 that we received. That was one of the most positive
22 aspects of solid waste we've ever had in Tuolumne County.
23 And if everybody knows the history about Tuolumne County,
24 they know what I'm talking about. Anyway, that grant
25 allowed Jim Grossman, the leader of our local volunteer

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1 group, Care for Tuolumne, to continue making positive
2 steps in cleaning up Tuolumne County.

3 Prior to that there was just a limited amount of
4 private donations. Jim -- or Cal Sierra was the major
5 contributor of that with Steve Jones there managing that
6 at the time. We really appreciated that, but it was
7 limited so we had no other money. This grant was really
8 a good thing for Tuolumne County.

9 I wanted to let you know that Jim Grossman has
10 been recognized for his cleanup efforts. He received the
11 John Muir award from the local chapter of the Sierra Club
12 and his volunteerism has been recognized by Assemblyman
13 George House also.

14 Tuolumne County continues to have a really
15 strong enforcement program. We're now working with Air
16 Resources Board on trying to do some surveillance to nab
17 some of the punks that dump this stuff. We're also very
18 proactive in our education program. We participate in
19 pollution prevention week, second chance week. We have a
20 local community yard sale in Tuolumne which was a very
21 kind of run-down area and now it's really becoming a
22 really nice area of the county. We participate in
23 America Recycles Day. Keep California Beautiful Month is
24 a very big month for me and we also participate in other
25 community events with a booth, passing out literature on

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1 dumping and recycling.

2 I wanted to let you know that all these aspects
3 combine to make a complete solid waste program for our
4 county and keeps -- will hopefully keep illegal dumping
5 to a minimum. I want to thank you.

6 CHAIR MOULTON-PATTERSON: Thank you.

7 BOARD MEMBER JONES: Madam Chair.

8 CHAIR MOULTON-PATTERSON: Mr. Jones.

9 BOARD MEMBER JONES: It's good to see Charlotte
10 Ginn again. She gives Jim Grossman the credit, but
11 actually she is out there. This is a 100 percent
12 volunteer group that goes out and cleans up sites of
13 illegal dumping all over Tuolumne County.

14 And with that, I want to move adoption of
15 Resolution 2000-335 to consider approval of the new sites
16 for the solid waste disposal and codisposal cleanup that
17 also acknowledges that no cost recovery is -- or cost
18 recovery is waived for Tuolumne County and the Lindsay
19 burn site.

20 BOARD MEMBER PAPARIAN: Second.

21 CHAIR MOULTON-PATTERSON: We have a motion by
22 Mr. Jones, second by Mr. Paparian, for Resolution
23 2000-335 for approval of new sites for solid waste
24 disposal and codisposal site cleanup program.

25 Secretary, would you please call the roll.

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1 BOARD SECRETARY: Eaton.
2 BOARD MEMBER EATON: Aye.
3 BOARD SECRETARY: Jones.
4 BOARD MEMBER JONES: Aye.
5 BOARD SECRETARY: Medina.
6 BOARD MEMBER MEDINA: Aye.
7 BOARD SECRETARY: Paparian.
8 BOARD MEMBER PAPARIAN: Aye.
9 BOARD SECRETARY: Roberti.
10 BOARD MEMBER ROBERTI: Aye.
11 BOARD SECRETARY: Moulton-Patterson.
12 CHAIR MOULTON-PATTERSON: Aye.
13 Number 25. Thank you, Ms. Nauman. We're
14 changing groups now.
15 MR. BLEDSOE: Good afternoon, Madam Chair and
16 Members of the Board.
17 Item 25 -- in Item 25, the question before the
18 Board is whether it should accept an appeal from the San
19 Bernardino County Local Enforcement Agency from a
20 decision by the San Bernardino County Independent Local
21 Hearing Panel regarding whether a California Bio-Mass
22 Recycling Center/Transfer Facility requires a Solid Waste
23 Facilities Permit.
24 Issues arising from this appeal include the
25 proper interpretation of Integrated Waste Management Act

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1 statutes and regulations flowing from those statutes,
2 specifically regarding the definition of "recycling
3 center" for which no Solid Waste Facility Permit is
4 required, and "transfer and processing stations" for
5 which a Solid Waste Facilities Permit is required.

6 The issues include the proper application of
7 those statutes and regulations to the facts in this case,
8 and an additional matter has been raised by Mr. Stewart
9 Cumming, who is the primary opponent of this project, as
10 to whether the Local Enforcement Agency is a proper,
11 quote, aggrieved party, closed quote, under our statutes.

12 As you will recall, under the AB 59 process the
13 first step in considering an appeal from a hearing panel
14 decision is whether the Board should accept that appeal.
15 So that is what we're here to discuss today as opposed to
16 the merits of the matter. The facility itself --

17 CHAIR MOULTON-PATTERSON: For the record, it's
18 Mr. Bledsoe. Michael Bledsoe.

19 MR. BLEDSOE: It is indeed. I'm very sorry
20 about that. The facility itself is located on a ten-acre
21 site in a heavy industrial zone in the City of San
22 Bernardino. Operations at the site will include the
23 collection, transfer, bagging and warehousing and
24 marketing of green waste and other organic material.
25 Materials to be received at the facility include green

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1 waste, wood waste, wall board, paper, pre- and
2 post-consumer food waste, and liquid food waste.

3 Those materials will be transferred to other
4 sites for composting and then after they are turned into
5 compost will be returned to the facility for bagging,
6 warehousing, distribution and sales. No composting is
7 going to occur at the facility and the material is
8 expected to remain on-site no more than 48 hours.

9 Residual waste from the operation is expected to
10 be approximately 3 percent and all of the material
11 arriving at the facility is source separated. On
12 average, the facility will process about 300 tons per day
13 of materials and on-site storage will be approximately
14 200 cubic yards.

15 In evaluating the operation at the facility, the
16 San Bernardino County Local Enforcement Agency decided
17 that the facility is properly considered as a recycling
18 center as opposed to a transfer and processing station.
19 The LEA applied what we call our two-part test to
20 determine -- to make that determination.

21 Under the two-part test, which is laid out in
22 Title 14 Code of Regulations Section 17402.5(d), a
23 recycling center is a facility that receives material --
24 only receives material that has been separated for reuse
25 prior to receipt and that the residual amount of solid

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1 waste from that material is less than 10 percent of the
2 amount of separated for reuse material received at the
3 facility by weight.

4 Mr. Stewart Cumming, on behalf of the Cimarron
5 Ranch Neighborhood Association, disagreed with the LEA's
6 interpretation of those statutes. Mr. Cumming, under
7 Public Resources Code Section 44307, appealed the local
8 hearing panel. His appeal was based on the alleged
9 ground that the LEA was not acting in accordance with the
10 Integrated Waste Management Act and regulations issued
11 pursuant to it.

12 The independent hearing panel held a hearing on
13 June 8th of year 2000. The hearing panel decided that a
14 Solid Waste Facilities Permit was required, so the
15 hearing panel upheld Mr. Cummings' appeal. The Local
16 Enforcement Agency has appealed from that determination
17 by the local hearing panel.

18 Under our statutes under the AB 59 process, the
19 Board is to accept the appeal if substantial issues have
20 been raised by the appeal. Staff recommends that the
21 Board accept the matter for hearing to be held within 60
22 days as required under AB 59. We believe that the
23 substantial issues that have been raised include the
24 proper interpretation and application of the two-part
25 test, which I described that regulation, and as well

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1 Public Resources Code Section 40200(b)(2), which is where
2 we find the definition of "transfer and processing
3 station."

4 I would like to briefly address the question
5 that Mr. Cumming raised -- I don't believe he's here
6 today -- the question as to whether the LEA is a proper
7 aggrieved person. Under Section -- Public Resources Code
8 Section 45030, any aggrieved person may appeal to the
9 Board from a decision by a hearing panel, from a written
10 decision by a hearing panel. If we just apply very
11 simple statutory interpretations tracking through our
12 Code what that Code section means, the legal office has
13 concluded that the LEA is a proper aggrieved person.

14 "Person" is defined very broadly at Section
15 40170 to include any entity whatsoever and any person.
16 The LEA is a government entity and so is a person.
17 "Aggrieved" in legal parlance means a person who has been
18 injured in his or her legal rights or who has a legal
19 interest at stake which has been burdened or a duty
20 imposed or a legal right denied.

21 Under that kind of definition, the LEA is
22 aggrieved because it has had a duty imposed on it by the
23 hearing panel, it's obligated to process now a Solid
24 Waste Facilities Permit, and it has certainly been
25 affected in carrying out its public duties by the hearing

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1 panel's decision. And more importantly, the LEA, if it
2 acts as directed by the hearing panel, will be subject,
3 of course, to litigation by California Bio-Mass who might
4 well have a different interpretation of that statute and
5 regulations. So we conclude that the LEA is an aggrieved
6 person under Section 45030.

7 I would point out that that makes sense given
8 the entire statutory scheme that these appeals arise
9 under. Mr. Cumming raised his appeal under Section 44307
10 under which anyone who doesn't think that the Local
11 Enforcement Agency is acting in accordance with the law
12 can appeal to the hearing panel. That puts a burden on
13 the hearing panel of interpreting the laws. That's the
14 question at issue there.

15 We don't believe that the Integrated Waste
16 Management Act perceives that the hearing panel will be
17 the final decision maker on what the Integrated Waste
18 Management Act and its regulations mean. That duty lies
19 with the Integrated Waste Management Board and ultimately
20 with the courts. So consequently if the LEA were not
21 allowed to raise this appeal, we have the situation
22 theoretically wherein each one of -- each hearing panel
23 could interpret the Integrated Waste Management Act as it
24 saw fit, and that really doesn't make any sense given the
25 need for uniform application of state law.

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1 So in conclusion, we would recommend that the
2 Board adopt Resolution Number 2000-339, accept the appeal
3 from the local hearing panel -- pardon me -- from the
4 Local Enforcement Agency from the hearing panel decision
5 and that the Board set a hearing on the merits of this
6 issue within 60 days from today.

7 Thank you.

8 CHAIR MOULTON-PATTERSON: Thank you,
9 Mr. Bledsoe. We have speaker slips. Would any Board
10 Member like to speak first?

11 BOARD MEMBER EATON: I just have a couple
12 questions. Who was -- what were the parties to the
13 independent hearing? How was that framed?

14 MR. BLEDSOE: The parties at the independent
15 hearing panel --

16 BOARD MEMBER EATON: Was that the County of San
17 Bernardino versus?

18 MR. BLEDSOE: Well, it's not set up as versus,
19 but yes, the Cimarron Ranch Neighborhood Association
20 brought the appeal and the Local Enforcement Agency of
21 San Bernardino participated.

22 BOARD MEMBER EATON: What do the documents read?
23 Was it the LEA or was it the County? Because that's a
24 big difference.

25 MR. BLEDSOE: The LEA.

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1 BOARD MEMBER EATON: Are you sure of that?

2 MR. BLEDSOE: I'm --

3 BOARD MEMBER EATON: Because where I'm going at
4 is that if it's the LEA, and I'm not sure of the logic, I
5 think we should hear the appeal, but I'm not sure the LEA
6 has standing in the sense it's a delegated authority by
7 us and how can we as a Board under delegated authority
8 hear an appeal of one of our own employees.

9 MR. BLEDSOE: Well, Mr. Block may want to
10 comment on this, but the LEA --

11 BOARD MEMBER EATON: I'm asking you.

12 MR. BLEDSOE: -- are not employees of the
13 Integrated Waste Management Board.

14 BOARD MEMBER EATON: But they're delegated
15 authority; correct? I'm trying to make sure the proper
16 parties are before us. I agree the appeal has to be
17 heard. I just want to make sure we have the proper
18 parties so we don't get challenged in court as well that
19 we were a biased board due to the delegated authority.
20 You understand the logic I'm trying to reach?

21 MR. BLEDSOE: Certainly. The Local Enforcement
22 Agency is obligated to carry out the Integrated Waste
23 Management Act under the overall supervision of the
24 Integrated Waste Management Board.

25 BOARD MEMBER EATON: Right. And they are

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1 officers under our authority; correct? Under color of
2 law.

3 MR. BLEDSOE: I think Elliot may want to comment
4 on this, but I do not see them as officers of the state,
5 if that's where you're going. They're employees of the
6 local government who are obligated to carry out certain
7 duties under the law.

8 BOARD MEMBER EATON: They have delegated
9 authority; correct?

10 MR. BLEDSOE: Correct. We define what those
11 duties are --

12 BOARD MEMBER EATON: You know what I'm trying
13 to get at. I'm trying to get at that we have the correct
14 parties before us. Is it the County of San Bernardino
15 versus Bio-Mass or the LEA because there is a difference
16 there.

17 MR. BLEDSOE: Right. Right.

18 BOARD MEMBER EATON: I want to make sure that we
19 can hear it as a panel.

20 MR. BLEDSOE: Right. As I understand it from
21 the San Bernardino County LEA who, is here today, it was
22 the San Bernardino County LEA who has brought this
23 appeal. The LEA participated in the hearing panel and it
24 is they who are bringing this appeal to our Board.

25 CHAIR MOULTON-PATTERSON: Mr. Block.

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1 MR. BLOCK: If I may, yes. Assuming -- what we
2 have in the item is a meeting agenda. It's not the
3 actual, if there was a document filed. The meeting
4 agenda, looks like it's page 25-7, does list Stewart
5 Cumming versus San Bernardino County LEA in terms of what
6 that document says.

7 As to the issue of the LEA being an employee of
8 or the agent of the Board, in the legal office we have
9 never interpreted our relationship with the LEA that way.
10 They are employees of the County. The determination as
11 to who the LEA will be is something that occurs through a
12 local designation. There's a process locally where an
13 entity is picked. Typically it's a county public health
14 department or environmental health and the Board
15 certifies that the LEA is qualified and capable of
16 performing those duties, and we have a review function, a
17 periodic review function to determine that they are in
18 fact carrying out those duties.

19 We have been very careful for a variety of
20 reasons, and this is one of them, to not characterize
21 that -- in a legal way not characterize that relationship
22 as an agency relationship because there is a certain
23 amount of independence that the LEA is entitled to
24 exercise. They are subject to our review to see that
25 they're doing a good job, that there's an autonomy there.

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1 It is a legitimate issue and one of the things
2 that Michael and I have been talking about earlier as
3 well, part of the issue that we run into is the way that
4 the statute is phrased. The statute is very interesting
5 when you look at it. In terms of the statute it does
6 talk about the LEA and the Board order after hearing an
7 appeal being directions that we can give to the LEA. To
8 a certain extent and the problem that I see is I'm not
9 sure that I would go that route anyway.

10 You could -- arguably if you took this far
11 enough, you could say the hearing panel is an arm of the
12 Board because the hearing panel within the context of our
13 statutes only has existence because it's been listed in
14 the LEA's application to be certified and the Board
15 approves that application. So in a sense the hearing
16 panel, the membership of the hearing panel and how it's
17 constituted is actually also approved by the Board. So
18 we've got a little bit of that happening on both ends.

19 What we've done is we've always gone on
20 basically just to follow the statutory language
21 specifically which in turn talks about appealing the
22 LEA's failure to act, the allegation that the LEA is
23 failing to act in accordance with law, and then the --
24 our appeal statutes would talk about the Board
25 potentially overturning a hearing panel or an LEA

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1 decision.

2 CHAIR MOULTON-PATTERSON: Mr. Paparian.

3 Thank you, Mr. Block.

4 BOARD MEMBER PAPARIAN: Do we have anybody from
5 this hearing panel here?

6 MR. BLEDSOE: Not from the hearing panel, no.

7 BOARD MEMBER PAPARIAN: Or anybody -- you said
8 Mr. Cummings is not here.

9 MR. BLEDSOE: Correct. And I don't believe
10 there's any representative of the association here.

11 BOARD MEMBER PAPARIAN: One of the things, if we
12 go forward with this, and we talked about this
13 separately. I would love to have some more information
14 than this agenda as to what happened at that hearing
15 panel. Either a transcript or some sort of summary of
16 the transcript of what happened there I think would be
17 very beneficial.

18 MR. BLEDSOE: Yes.

19 BOARD MEMBER PAPARIAN: Maybe that could be
20 communicated back to the hearing panel, I guess.

21 MR. BLEDSOE: And to the LEA bringing the
22 appeal. That will be.

23 BOARD MEMBER JONES: Madam Chair.

24 CHAIR MOULTON-PATTERSON: Mr. Jones.

25 BOARD MEMBER JONES: I too think there should be

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1 a hearing on this one. I think Mr. Eaton brings up an
2 interesting point that, you know, what exactly is their
3 role. But remember, everybody that has a right, a
4 citizen, an operator or the LEA to go to a hearing panel
5 is -- every one of them are somehow governed by that
6 same -- that same hierarchy.

7 I think that this is interesting because this
8 one issue points out that we have a hole in our
9 regulations, that we did not contemplate this particular
10 tier when we were doing the tiers. And we're going to
11 need to deal with that, but I think an LEA that
12 interprets what this Board is thinking as opposed to an
13 LEA that does the two-part test and does what they're
14 supposed to do, I would much rather they do what the law
15 says -- tells them to do or directs them to do than for
16 them to interpret what this Board is thinking at any
17 given time.

18 So I'm going to support the need for a hearing,
19 but I think as an outcome of that hearing at some point
20 we need to talk about the fact that there are no
21 regulations that deal with a source separated putrescible
22 wastestream. This is different. This is out of what we
23 had already put into tiers.

24 CHAIR MOULTON-PATTERSON: Thank you.

25 Senator Roberti.

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1 BOARD MEMBER ROBERTI: Madam Chair, I would like
2 to make a motion.

3 CHAIR MOULTON-PATTERSON: Well, we have some
4 speakers.

5 BOARD MEMBER ROBERTI: I'd like to make a motion
6 so I can be on record.

7 CHAIR MOULTON-PATTERSON: Okay. Thank you.

8 BOARD MEMBER ROBERTI: And of course I have to
9 leave.

10 CHAIR MOULTON-PATTERSON: Sorry.

11 BOARD MEMBER ROBERTI: That's all right.

12 CHAIR MOULTON-PATTERSON: Go right ahead.

13 BOARD MEMBER ROBERTI: So I would like to move
14 Resolution 2000-339.

15 CHAIR MOULTON-PATTERSON: I'll second it. Thank
16 you, Senator Roberti. Jim Trujillo, Dan Avera. Would
17 you state your name please.

18 MR. TRUJILLO: Sure. Good afternoon, Madam
19 Chairman and Members of the Board, board staff. In view
20 of the time, and it's been a long day, I'm going to
21 shorten my remarks.

22 My name is Jim Trujillo and I'm a supervisor
23 with San Bernardino County Local Enforcement Agency.
24 Pursuant to Public Resources Code Section 4530(a), our
25 LEA appeals to you, the California Integrated Waste

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1 Management Board, to review an overturned June 8th, 2000
2 written decision of the San Bernardino County Solid Waste
3 Independent Hearing Panel.

4 In their written decision, the panel found that
5 our LEA has authority to require a permit for the
6 proposed organics recycling center --

7 CHAIR MOULTON-PATTERSON: Excuse me.

8 Secretary, could you open the roll for Senator
9 Roberti? He has to leave.

10 BOARD SECRETARY: Roberti.

11 BOARD MEMBER ROBERTI: Aye.

12 CHAIR MOULTON-PATTERSON: Thank you. I'm so
13 sorry. Could you continue, please.

14 MR. TRUJILLO: The center is located within the
15 City of San Bernardino. We respectfully disagree with
16 the panel's ruling. All present credible evidence
17 available continues to indicate to us that only a
18 recycling center pursuant to the Public Resources Code
19 and to Title 14 has been designed and proposed for this
20 location and a Solid Waste Facilities Permit is not
21 required.

22 Our LEA continues to find that the proposed
23 recycling center which is located in a zone marked heavy
24 industry, that it's surrounded by vacant parcels and has
25 homes within a thousand feet but across the freeway, that

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1 this area -- center is designed to receive only source
2 separated and commingled organic recyclable materials
3 containing less than 10 percent residual contaminants
4 such as plastic, metal and glass items --

5 MR. CHANDLER: Madam Chair, I hate to interrupt,
6 but I want to make a point at least from my perspective.

7 CHAIR MOULTON-PATTERSON: Mr. Chandler.

8 MR. CHANDLER: The issue before you today is to
9 decide whether or not you want to hear this appeal. You
10 will hear, if you choose to hear the appeal, evidence
11 compelling your decision one way or the other and I would
12 ask the Board to be careful that you don't begin to allow
13 the speaker today to begin to move into the area of
14 presenting the LEA's perspective as to why you should
15 decide one way or the other. I think the background
16 being given, while helpful, may start to move in that
17 direction. So from my perspective, I think you may be
18 moving into the second phase of your duties and
19 responsibilities.

20 CHAIR MOULTON-PATTERSON: Okay. So as I
21 understand it, it is just our task to decide if we want
22 to have a hearing. And you're certainly allowed to speak
23 to that but not get into the substance of what we'll be
24 doing at the hearing.

25 MR. TRUJILLO: Then I guess what I'll do is just

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1 say that I'm in agreement. We're in agreement with the
2 staff report as presented by Mr. Bledsoe and that we ask
3 that you accept our appeal and set this matter for a
4 hearing.

5 CHAIR MOULTON-PATTERSON: Thank you very much.

6 MR. CHANDLER: Thank you, Jim.

7 CHAIR MOULTON-PATTERSON: I had two other
8 speaker slips. Mr. Edgar. And again, to the hearing.

9 MR. EDGAR: Madam Chair, Board Members, my name
10 is Evan Edgar, Edgar and Associates, on behalf of the
11 California Refuse Removal Council representing 25
12 permitted compost facilities and we are the angels of the
13 compost industry. We do a good job.

14 We support the need to have a hearing on this.
15 I believe that the merits of the case will bring out a
16 key issue in context of a case study that will feed into
17 the upcoming composting regs. Currently are eight
18 workshops going statewide about this whole issue of the

19 two-part test, so I believe that by hearing this case
20 study within the next 60 days and getting feedback from
21 the eight workshops will give this Board adequate
22 information to make the decision on the merits of the
23 case.

24 We support the hearing and look forward to
25 testify at a later date, and meanwhile I would like to

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1 submit in the record my July 17th, 2000 letter that
2 provides an institutional history, the manifesto of food
3 waste, and the "P" word, putrescibles and its two-part
4 test.

5 So with that, I appreciate the time.

6 CHAIR MOULTON-PATTERSON: Thank you, Mr. Edgar.

7 Ms. Denise Delmatier.

8 MS. DELMATIER: Thank you, Madam Chair, Members
9 of the Board. Denise Delmatier with Norcal Waste
10 Systems. I too will abbreviate my comments and reserve
11 comment for the actual subject matter of the hearing.
12 However, do I want to alert the Board and on the merits
13 of whether or not to continue with the appeal.

14 The two-part test that was alluded to in the

15 comments by staff and others is the cornerstone for the
16 tiered permitting process. We've worked very, very hard
17 on those issues. We respectively disagree with the
18 assessment by staff in bringing this appeal forward that
19 the two-part test in fact did not encompass putrescible
20 waste and it was our discussions and negotiations for
21 several years, in fact those discussions and negotiations
22 began before any of the current members of this Board.

23 They, as I mentioned, went on for several years,
24 and it was only until we got to resolution on agreement
25 and consensus on the two-part test that we were actually

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1 able to move forward with the tiered permitting regs. So
2 we respectfully disagree rather stringently and strongly
3 that putrescible wastes were meant to be included in an
4 exemption for permitting requirements under the Solid
5 Waste Facility Permit tiered permitting.

6 We strongly agree with those who in fact
7 participated in those discussions that putrescible wastes
8 are not in the regulations themselves because they were
9 always considered to be outside the two-part test. The
10 putrescible waste is municipal solid waste. Therefore,
11 there is no exemption for any permit requirement for
12 putrescible wastes. We will bring forward further
13 comments and at the hearing, but I think it's an
14 important issue since the whole idea of bringing this
15 appeal forward is based on that premise.

16 CHAIR MOULTON-PATTERSON: Thank you. We have a
17 motion before us. Motion by Senator Roberti, seconded by
18 Mr. Paparian -- or did I second it? For Resolution
19 2000-339 to accept appeal of San Bernardino County Local
20 Enforcement Agency from decision by San Bernardino County
21 Solid Waste Independent Hearing Panel that Cal Bio-Mass
22 Inc. Recycling Center/Transfer Facility requires a Solid
23 Waste Facilities Permit.

24 Secretary, would you please call the roll.

25 BOARD SECRETARY: Eaton.

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1 BOARD MEMBER EATON: Aye.

2 BOARD SECRETARY: Jones.

3 BOARD MEMBER JONES: Aye.

4 BOARD SECRETARY: Medina.

5 BOARD MEMBER MEDINA: Aye.

6 BOARD SECRETARY: Paparian.

7 BOARD MEMBER PAPARIAN: Aye.

8 BOARD SECRETARY: Moulton-Patterson.

9 CHAIR MOULTON-PATTERSON: Thank you.

10 It's my understanding you need a date from us at

11 this time. It was my understanding that possibly Monday

12 afternoon of the 21st would be convenient. I think I've

13 gotten feedback from the other Board Members. Is that

14 going to work for you, Mr. Eaton?

15 BOARD MEMBER EATON: How long do you think it's

16 going to -- what do you estimate the time to be?

17 MR. BLEDSOE: I would guess around two to three

18 hours.

19 BOARD MEMBER EATON: So this would be like

20 mid-afternoon? Set it.

21 CHAIR MOULTON-PATTERSON: So 2:30, would that

22 give everybody time to get down there or 3:00? 3:00 or

23 2:30. Should we set it for 2:30 Monday the 21st at the

24 Fountain Valley Civic Center, City Hall?

25 Didn't I say aye? Aye. I'm sorry. I was so

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1 anxious to get a date.

2 BOARD MEMBER JONES: Madam Chair.

3 CHAIR MOULTON-PATTERSON: Yes, Mr. Jones.

4 BOARD MEMBER JONES: I just want to ask one

5 question before this thing comes to appeal.

6 The documentation that we got shows two names on

7 the hearing panel. How many members were at the hearing?

8 MR. AVERA: Three. There was a vote. It was

9 two to one.

10 BOARD MEMBER JONES: I just wanted to know

11 because you're supposed to have three people. When I saw

12 two I thought, "What's this all about?"

13 CHAIR MOULTON-PATTERSON: Okay. We're going

14 to -- before we hear Item 21, we're going to have a

15 break. If we could be back about 4:30.

16 (Recess taken)

17 CHAIR MOULTON-PATTERSON: I'd like to call the

18 meeting back to order.

19 We'll disclose any ex partes. Mr. Eaton.

20 BOARD MEMBER EATON: None, thank you.

21 BOARD MEMBER MEDINA: Mel Asagai.

22 BOARD MEMBER PAPARIAN: Mel Asagai.

23 CHAIR MOULTON-PATTERSON: I have none.

24 Just for the record, on our hearing for August

25 21st, the San Bernardino matter, because of some

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1 constraints we have on the room, I've talked to the Board
2 Members and we've decided to make it at 2:00 p.m. instead
3 of 2:30. So 2:00 p.m. on Monday August 21st.

4 We're back to our last item of the day before
5 closed session and that's Item 21, status report on
6 permit conditions on Lionudakis Wood and Green Waste
7 Recycling Facilities.

8 Ms. Nauman.

9 MS. NAUMAN: Thank you, Madam Chair, Members
10 Julie Nauman.

11 This item, as you just read into the record, is
12 a follow-up from the Board's action in January of this
13 year when you concurred in the issuance of a Solid Waste
14 Facility Permit for this facility by the Sacramento
15 County LEA. Condition 35 of that permit, which you have
16 a copy of in your packet, provides that the operator
17 shall cooperate with the LEA in the preparation of a
18 status report on site operations. The report shall be
19 submitted to the California Integrated Waste Management
20 Board by July 15th, 2000.

21 You have in your packet as attachment number 3
22 the status report which was submitted by the Sacramento
23 County LEA to Waste Board, addressed to the Board and is
24 dated June 29th, 2000. Today we have the LEA here from
25 Sacramento County to provide the status report to you.

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1 CHAIR MOULTON-PATTERSON: Just a moment. Before
2 we start, Mr. Jones, any ex partes?

3 BOARD MEMBER JONES: Just with the folks from
4 San Bernardino County talking about the item that we had
5 just spoke about and maybe what some future Board action
6 needs to be.

7 CHAIR MOULTON-PATTERSON: Thank you very much.
8 You may proceed.

9 MS. NAUMAN: Terry Kociemba from the LEA.

10 MS. KOCIEMBA: Yes. Again, Terry Kociemba from
11 the Sacramento County LEA.

12 Essentially I am here to be available to answer
13 any questions you may have regarding the Lionudakis site.
14 I'm not necessarily here to give a presentation, just to
15 answer any questions.

16 CHAIR MOULTON-PATTERSON: Thank you for being
17 here. I know a number of our Board Members visited, and
18 did we have any questions?

19 Mr. Paparian.

20 BOARD MEMBER PAPARIAN: If I were a member of
21 the local community, it seems like we may be hearing from
22 some folks from the local community later, if I were a
23 member of the local community, how would I know to call
24 the comment line or the hot line or whatever the line is
25 if I had a concern about what I was -- may or may not be

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1 smelling in the area?

2 MS. KOCIEMBA: There have been several not
3 necessarily flyers but -- let's see. At the September
4 22nd Board meeting we gave out my phone number and
5 subsequently I formed an additional hot line, a voice
6 mailbox to take in odor complaints. Since then there
7 have been several flyers that various citizens have put
8 out through the Rosemont community. In addition, there's
9 a web site for the Rosemont community that also published
10 the phone number. So it's essentially been through
11 flyers, not an official flyer from us but flyers and word
12 of mouth essentially. It hasn't been published in a
13 newspaper or anything like that.

14 Also in the phone book there is a general
15 intake, complaint intake response line and it's --
16 everything associated with this particular site is
17 directed to me. If it goes to the Air District, it comes
18 to me. If it comes through central intake, it comes to
19 me directly. I receive it in several different ways.

20 BOARD MEMBER PAPARIAN: Do you find any
21 correlation between the number of complaints and anything
22 going on either at the facility or weather-wise or
23 anything like that?

24 MS. KOCIEMBA: Yes, I have. There have been a
25 few trends. Generally I've noticed that the trends have

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1 to do with the inversion layer. I'm not an air expert so
2 I can't really say with any degree of certainty as to why
3 this is happening. There have been a couple of instances
4 where they have had equipment failures or other incidents
5 that have happened on the site where they're trucking
6 perhaps a hot load off site and you could have a large
7 long-haul truck that's trucking off some pretty
8 odoriferous material and it can linger in the area for
9 quite some time, but there isn't any one particular thing
10 that you could pinpoint to any of these particular peaks.

11 I do have a graph that shows odor trends
12 actually. Started keeping this right after.

13 BOARD MEMBER PAPARIAN: Is this the one we have
14 in our binder?

15 MS. NAUMAN: No.

16 BOARD MEMBER PAPARIAN: Okay.

17 MS. KOCIEMBA: Essentially I began keeping data
18 from the beginning, since the September 22nd Board
19 meeting, through the odor hot line. And again, the phone
20 number was given out at that time and you can see quite a
21 fluctuation throughout time. It's almost been a year as
22 a matter of fact.

23 BOARD MEMBER MEDINA: In regard to the
24 complaints, were they specific as to the type of odor
25 that they were able to detect?

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1 MS. KOCIEMBA: A good portion of them. They
2 tried to be as specific as they could as possible.
3 However, when it comes to odors it's very difficult to
4 characterize an odor. It varied from anywhere from the
5 manurey smell to a dirty diaper smell. Again, odor is so
6 subjective it can be very difficult to determine exactly
7 what it is they're talking about if you're not there at
8 the exact same time that they're smelling the odor.

9 BOARD MEMBER MEDINA: I noted when we arrived it
10 was -- you could clearly detect that there was a dairy
11 nearby, and in fact, when I left this facility within a
12 block there were cattle nearby.

13 MS. KOCIEMBA: That's correct.

14 CHAIR MOULTON-PATTERSON: I did want to mention
15 to the audience that if you wish to speak, now would be
16 the time to fill out a speaker slip because we have none,
17 which is certainly -- at least people are -- they're
18 doing a better job than in September because we had lots
19 and lots of people speaking, just as a little history for
20 our new Members.

21 BOARD MEMBER PAPARIAN: One of the -- somebody
22 sent a copy of a flyer going around the local community
23 and it -- according to this flyer there are -- the
24 Bioscent is known to cause various problems, lung
25 irritations and other things. Do you have any reason to

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1 believe that Bioscent itself can cause problems?

2 MS. KOCIEMBA: At this particular time, no, I
3 don't. I did send an E-mail to the manufacturer of
4 Bioscent. They responded with a letter stating that --
5 they essentially sent me the MSDS, materials safety data
6 sheet, for that particular product and it essentially
7 states that Bioscent -- I'm quoting the letter actually,
8 "Contains a blend of biodegradable essential oils
9 extracted from natural plant origins." It says it
10 doesn't contain any petroleum distillates, alkalis or
11 chlorinated solvents and is non-toxic. It's authorized
12 for use by the USDA for odor neutralizing in federally
13 inspected meat and poultry facilities. It does show that
14 it can cause some eye irritation and dermal irritation,
15 but as far as anything concrete or specific, I don't know
16 anything at this time.

17 BOARD MEMBER PAPARIAN: And then an E-mail that
18 we -- I guess many of us received this morning or a copy
19 of an E-mail many of us received this morning indicated
20 there have been complaints about chronic lung and nasal
21 irritations, chronic fatigue, immune deficiencies and
22 some other items. Have you had those sorts of complaints
23 and have you followed up on those sorts of things to see
24 if there's any validity?

25 MS. KOCIEMBA: This is the -- really the first

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1 time that I've heard about long-term effects or effects
2 associated with the long-term as far as immune system
3 or -- I have the same E-mail here. Again, there isn't a
4 whole lot of data to look at. I don't really have a real
5 basis to give you a good educated answer at this time.

6 BOARD MEMBER PAPARIAN: Okay. Thanks.

7 CHAIR MOULTON-PATTERSON: We do have one
8 speaker, James Sands.

9 MR. SANDS: I just found out about this like
10 about a half hour ago and the neighbors in my
11 neighborhood were basically under the impression this was
12 tonight. That's why I don't see anybody here.

13 I used to work for Lionudakis. The only reason
14 I did is because I went to complain to the County. The
15 County gave my number to Phil. Phil called me. Hours
16 later I'm working for him.

17 It's a great idea. It will work, but no matter
18 if it does or doesn't, it will smell. That's it. Bottom
19 line. I look at the chart. You people look at the
20 chart. You see high numbers, you see low numbers. The
21 high numbers are at the end of summer. The low numbers
22 are during the winter. We have -- we use -- in tree
23 branches coming in, what smells? Nothing. It's now
24 summer. It is smelling again. Bottom line.

25 It's not that bad like it used to be. He did

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1 take away a lot of the smell, but at the same time at
2 night when the wind dies in Sacramento, you don't have
3 the Cartinas wind, it comes from his plant going towards
4 our homes on Newton Drive towards Hedge. During the
5 daytime, if it's a south wind you're going to smell it on
6 Jackson and Bradshaw, and if it's a north wind you're
7 going to smell it.

8 I don't have a home with air conditioning. I've
9 got to have windows open. I'd love to have you people
10 stand in the garage after having a trash can open after
11 an hour of something in it for two weeks and then smell
12 it in your garage and tell me you can sleep in a bedroom
13 with it. It's hard to say because it's hard for me --
14 I've never been in front of you people like you before,
15 even public speaking.

16 The idea is great, but at the same time I think
17 that there were a lot of things behind it that he was
18 forced into the area because it's a big area and there
19 were a lot of things he had to do to get the permit and
20 there were a lot of things that were done to do it.

21 I'm behind the environmental and the rest of it,
22 but at the same time too we have to be sensible. If he's
23 running even 24 hours a day grinding that stuff up, even
24 if it's put into windrows, even if the scarab is turning
25 it up and the rest of it, you will still have a smell.

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1 You will have a green waste smell. You will have the
2 smell from the actual piles being turned, but at the same
3 time it's a smell. It's not fresh air. It's something
4 that is so bad, like people have said, that you wake up
5 in the middle of the night and you can't go back to
6 sleep. You wake up at 11:30 at night and 2:00 and 3:00
7 in the morning and start sniffing and go okay, it's not
8 as bad and you try to lay down again.

9 For a lot of times you don't smell it. The
10 Bioscent, well, I've only seen it running for the last
11 couple of days but then I've known for the last couple of
12 months it hasn't been because you can smell it when you
13 go up and down the neighborhoods and it's just been water
14 coming out of there.

15 I may have worked there and may have not been
16 there for a while, but I can still see over the fence
17 what the operations are doing. Sometimes the equipment
18 works and sometimes it doesn't, but at the same time we
19 don't have a shop. We need a shop there to take care of
20 it, not wait two or three days for somebody to come up
21 and fix it because they're busy with other places.

22 It's a great idea. It makes money for County,
23 for him, for anybody else, but for anybody in the area, I
24 mean -- to move it would cost nothing but money, more
25 diesel fuel going out Jackson Highway to the dump. Now

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1 your schedules are messed up because you can't get
2 everybody in the county because they're spending more
3 time driving farther away. We are all going to pay for
4 it at the end, but at the same time you people don't
5 smell it.

6 I don't see anybody here from my neighborhood
7 because they were under the impression this was going to
8 be later. I'm not against Phil and the company, I'm
9 against the smell. I don't think it can be taken care of
10 in an area that -- heavy industrial, we're not heavy
11 industrial. The industrial is up past Watt Avenue. We
12 have a few shops out there. The rest of it is like open
13 range land, but there are homes out there.

14 Where the smell goes is where Rosemont, the golf
15 course, up Bradshaw to everybody else and then you hear
16 in the paper they want to put a high school next to -- a
17 post office across the street from a juvenile hall that's
18 going to be in the middle of the smell zone, so if you
19 have kids going to the high school for a football game,
20 you're going to need gas masks because you're going to
21 smell it. That's the bottom line.

22 I've got nothing against the man. He put a lot
23 of money into this and it's a very environmentally sound
24 thing to do, but I'm sure there's just a couple of us
25 that you hear from, but until you take your garbage can

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1 that's been filled for two weeks, closed, in the sun and
2 put it in your bedroom or in your garage for an hour with
3 the lid open, then walk into that room and go I'm going
4 to sleep through this.

5 Like I say it's -- the smell alone. I've lived
6 there 14 years. I've lived in Sacramento all my life.
7 I'm 49. To me they just do Band-aid fixtures in this
8 town. People come in from somewhere else, they were
9 elected, bought and paid for, they're on their way to the
10 east coast, they don't do nothing for this town.

11 At the same time the smell is incredible, just
12 totally incredible some nights it gets so bad. It may
13 seem real funny to you guys, but until you have it in
14 your bedroom at 2:00 in the morning without central air
15 and heat, it sucks.

16 Other than that, like I say, I'm not against the
17 man. I'm not against the organization. You guys try to
18 do what you can do. He came in. I got in his face. He
19 said hey, man, we're going to take care of it. I'll get
20 the equipment up here and we'll get everything rolling,
21 I'm bringing in equipment, we're going to do that, the
22 smell will be gone. I've put up with it for a year. I
23 worked there, but I don't work there now.

24 I'm not against the man, against anything else
25 about it. I like the environmental, what they do and the

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1 people he brought in to help him out because it wasn't a
2 well-known thing about green waste, but the well-known
3 thing is it stinks. That's it. Like I say, if they did
4 have to move it up to the dumps, yeah, it's going to be
5 more money for fuel, more time for people on the road,
6 schedules messed up, more money for taxpayers because
7 it's going to cost, but at the same time I'll pay that
8 just to get the smell out.

9 It should be up above Bradshaw. You guys do
10 eminent domain things. Go between the two grave yards
11 the one before the race track and the pet cemetery where
12 the Saigon one is. Go out there and take some property
13 from Tygart. This doesn't have to go all the way to the
14 dump, but put it where there is no nobody. But when you
15 do that, now you're going to foul up the homes that
16 Mather is putting in next to an airport where they're
17 going to start screaming about the noise.

18 Like I say, it's just one person that came here
19 but the chart shows you there's not that many complaints
20 but yeah, that's during the winter time when there's no
21 smell. Now we'll see the chart starting from this month
22 going up to the end of the year. You're going to see
23 what you see on the far left, big old points going up,
24 but right now there was nothing coming that smelled. Now
25 there is a little bit. I smell it, other neighbors smell

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1 it, but if the wind dies, the south wind dies, at 8:00 or
2 9:00 at night, by 9:15, 9:30 you have like an east wind
3 that comes into the neighborhood, that comes in. And
4 that won't go away until the sun comes up and you get a
5 south wind or a north wind. That's how we get affected.
6 We're so close, it's unbearable.

7 And unless you guys want to put central air into
8 my house and pay the electric bill, I mean that would be
9 kill, but at the same time I have nothing against the man
10 or his organization. He came into this, the County
11 thought it was a good idea, but at the same time
12 everybody knows green waste smells. Garbage smells, but
13 some of this stuff coming in you wouldn't believe.

14 You can go out there and check and inspections
15 and stuff, but they know you're coming so the smell is
16 gone. Swing on out there when nobody knows you're
17 showing up. When the neighbor calls, be there within 10
18 minutes and go okay. What is it? But like I say, I've
19 never done public speaking. I don't know if it did any
20 good or not. There was nobody else here from the
21 neighborhood. And like I say, it's nothing against the
22 man and what you guys are trying to do, but at the same
23 time it's not going to work no matter what you do, how
24 much grinding, how much hauling out you do, if the
25 equipment is running all the time, it's going to smell.

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1 Either green waste or compost, it's not fresh air.

2 I thank you very much for letting me spout off.

3 CHAIR MOULTON-PATTERSON: Thank you, Mr. Sands,
4 for coming down.

5 Again to the LEA, what is the zoning?

6 MS. KOCIEMBA: I am not a hundred percent
7 certain what the zoning is to tell you the truth, but I
8 think it it's light industrial.

9 CHAIR MOULTON-PATTERSON: Thank you.

10 Any other Board comments? Mr. Paparian.

11 BOARD MEMBER PAPARIAN: The gentleman indicated
12 that overnight there is more of a problem and the E-mail
13 we got indicated that overnight there's more of a problem.

14 MR. SANDS: When the wind dies down.

15 BOARD MEMBER PAPARIAN: Is that -- have you ever
16 been there at night to check some of this out to see if
17 that's --

18 MS. KOCIEMBA: Actually --

19 MR. SANDS: I live from here to those apartments
20 across the street, that's how far away Lionudakis is to
21 Newton Drive, Fruitridge and Mayhew. That's where we
22 are. That's how close we are. What it is is Fruitridge
23 runs this way, Mayhew runs this way up to Jackson. Nine
24 out of ten days in Sacramento you've got a Cartinas
25 straight south wind that will blow it out towards Jackson

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1 Highway, but when the wind dies down at night or early in
2 the morning, if there is no south or north wind it's just
3 a calm wind when the sun comes up. It comes from Mayhew
4 where the plant is back up into the neighborhood towards
5 us, towards Newton, towards Hedge, towards Watt Avenue.

6 It's coming in towards town, not going out
7 towards the air base. It's actually coming up and that's
8 why you get the complaints from the golf course and from
9 Rosemont and all the other stuff because where the road
10 is here and the pit is here, you have a wind blowing that
11 way. But when the wind is not blowing, it will come out
12 this way. That's when you'll get a nighttime or early
13 morning calls, and then the calls between 7:00 and 9:00
14 are the people when the wind is blowing across Jackson
15 Highway and people going to work and that's when they
16 start calling.

17 CHAIR MOULTON-PATTERSON: Thank you, Mr. Sands.
18 Did you mean the LEA, had she been out there during the
19 night?

20 BOARD MEMBER PAPARIAN: Yes.

21 CHAIR MOULTON-PATTERSON: I believe the question
22 was addressed to you.

23 MS. KOCIEMBA: Yes. I have done several odor
24 surveys, as I call them, driven around the area at
25 various times of the early morning and the evening. I

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1 have many friends that live in the Rosemont area, so I go
2 over to their houses and we -- I go over there for --
3 most of the purpose to sit in the backyard and see if I
4 can pick anything up. The unfortunate thing is that the
5 way the odor characteristic is it can be very elusive,
6 and if you smell it in one particular place you may not
7 smell it in another place.

8 Again, it's very subjective. I have on
9 occasion, during the odor surveys, I have smelled the
10 compost odor off-site predominantly at Jackson Road and
11 Bradshaw as he was discussing. There have been a couple
12 of times where I smelled it off Newton Road or Newton
13 Drive, and that was in the early morning. But short of
14 being out there 24 hours a day, it was essentially hit or
15 miss. I don't have any real good data to support it
16 either way.

17 BOARD MEMBER PAPARIAN: Do you have any reason
18 to believe the equipment may be not working as well
19 overnight or turned off overnight or anything like that
20 going on?

21 MS. KOCIEMBA: That's a possibility. And I have
22 asked them in the past does the Bioscent, the misting
23 system, run overnight. From what I understand for the
24 most part it does. I can't verify that, though. I can't
25 go out there every single night and verify it is working.

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1 I'm essentially asking them if it is working or not.

2 When I was out there, it -- I did observe it was
3 functional at that particular time.

4 MR. SANDS: It is on.

5 CHAIR MOULTON-PATTERSON: Thank you.

6 BOARD MEMBER JONES: Madam Chair.

7 CHAIR MOULTON-PATTERSON: Mr. Jones.

8 BOARD MEMBER JONES: This item is to give us a
9 status report or for them to increase the tonnage which
10 was already permitted to go up to 50,000 or what?

11 MS. NAUMAN: Mr. Jones, technically this is an
12 information item for you, to provide the status report
13 that was called for in the LEA's condition. We can ask
14 the LEA to address the other issue of the ratcheting up,
15 if you will, of the tonnage.

16 BOARD MEMBER JONES: Is the outcome of this
17 meeting -- because I think part of the permit said that
18 depending upon how they did, in April of 2000 they could
19 potentially increase their tonnages or their yardage from
20 30,000 to 50,000. Is that what the outcome of this
21 hearing is going to be?

22 MS. KOCIEMBA: Essentially we -- the operator
23 hosted a community meeting a while back that essentially
24 addressed that issue, and at that time we verbally agreed
25 that they could increase to 50,000 cubic yards given a

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1 few additional conditions, and to this date that hasn't
2 been put in writing. It was a verbal agreement only.

3 BOARD MEMBER JONES: Because 50,000 was part of
4 the permit, it was a ratcheting up thing?

5 MS. KOCIEMBA: Correct.

6 BOARD MEMBER JONES: So you don't know if
7 they've ratcheted to 50,000 or if you guys are still
8 working on some issues.

9 MS. KOCIEMBA: Still working on some issues, and
10 as far as I know they're still at or about 30,000 cubic
11 yards.

12 BOARD MEMBER JONES: I think one thing that's
13 kind of interesting is that we had 30, 40 residents here
14 with a whole diagram of how they made -- how to make
15 complaints, two or three flyers identifying if it smells
16 like this, this, this or this, then it's coming from the
17 composting facility. Here's the number to call. So it
18 clearly was not an issue of those 30 or 40 that were here
19 had the information. I think that seeing the limited
20 amount of calls gives me a little bit of comfort that
21 that was a pretty adamant group, that if they wanted to
22 do a phone barrage I think they probably were well enough
23 orchestrated.

24 I have a question of the operator, if I can. I
25 want to ask Evan. Are all those -- the pieces still in

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1 place that Lionudakis -- okay.

2 CHAIR MOULTON-PATTERSON: Excuse me. Please
3 state your name for the record.

4 MR. LIONUDAKIS: Phil Lionudakis, 25071 East
5 Jones, Escalon, California.

6 CHAIR MOULTON-PATTERSON: Thank you.

7 BOARD MEMBER JONES: All of the things that you
8 guys were putting in, the telephone poles, the sprayers,
9 the second piece of equipment to do the turning, the --
10 all those things, have all those been fulfilled?

11 MR. LIONUDAKIS: Yes. We do run the misters 24
12 hours a day, and in our last public meeting the neighbors
13 actually spoke for us and in the last few days neighbors
14 have come by and said that we're doing a great job,
15 talked to my foreman, neighbors that were really -- we
16 thought we might have a problem with before. They've
17 congratulated us. I haven't been there but Gilbert has,
18 to talk to these people.

19 BOARD MEMBER JONES: Okay.

20 MR. LIONUDAKIS: I was at the last neighborhood
21 meeting of course.

22 CHAIR MOULTON-PATTERSON: Thank you very much,
23 Mr. Lionudakis.

24 Seeing no more comments, we are finished with
25 this agenda except for our closed session that will take

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1 place right now.

2 Thank you very much.

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4 I, Terri L. Emery, CSR 11598, a Certified
5 Shorthand Reporter in and for the State of California,
6 do hereby certify:

7 That the foregoing proceedings were taken
8 down by me in shorthand at the time and place named
9 therein and was thereafter transcribed under my
10 supervision; that this transcript contains a full, true
11 and correct record of the proceedings which took place
12 at the time and place set forth in the caption hereto.

13

14

15 I further certify that I have no interest
16 in the event of the action.

17

18

19 EXECUTED this 25th day of August, 2000.

20

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Terri L. Emery

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